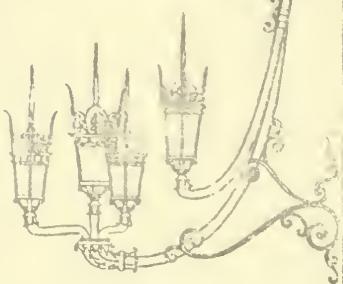


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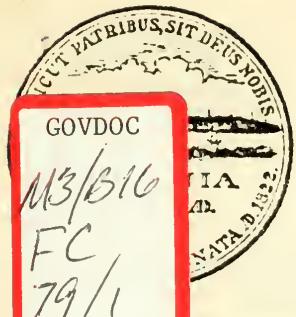
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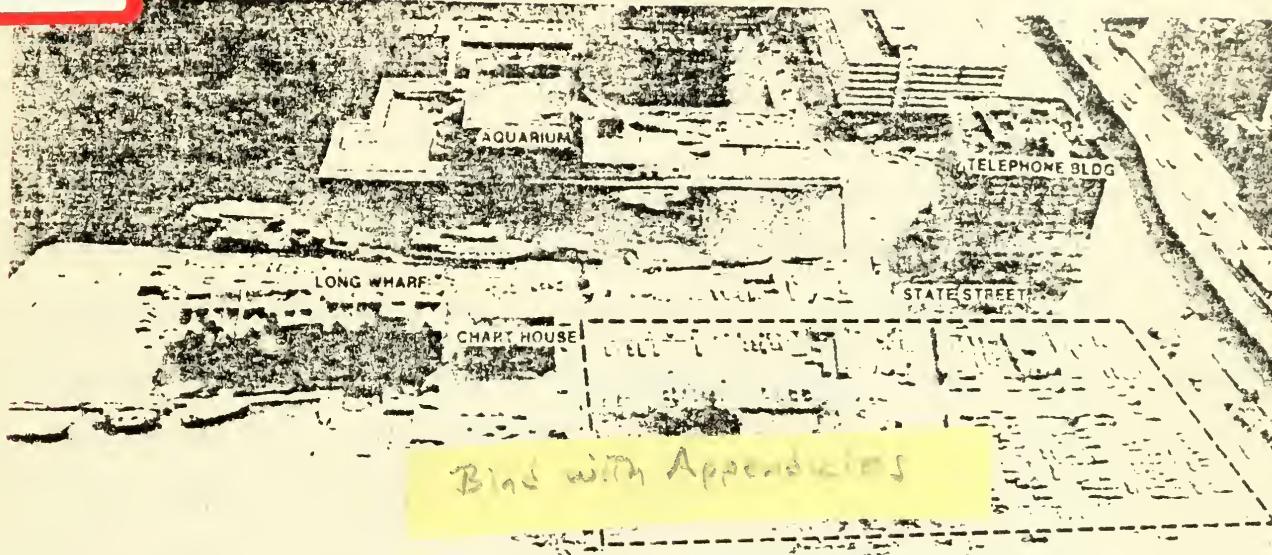


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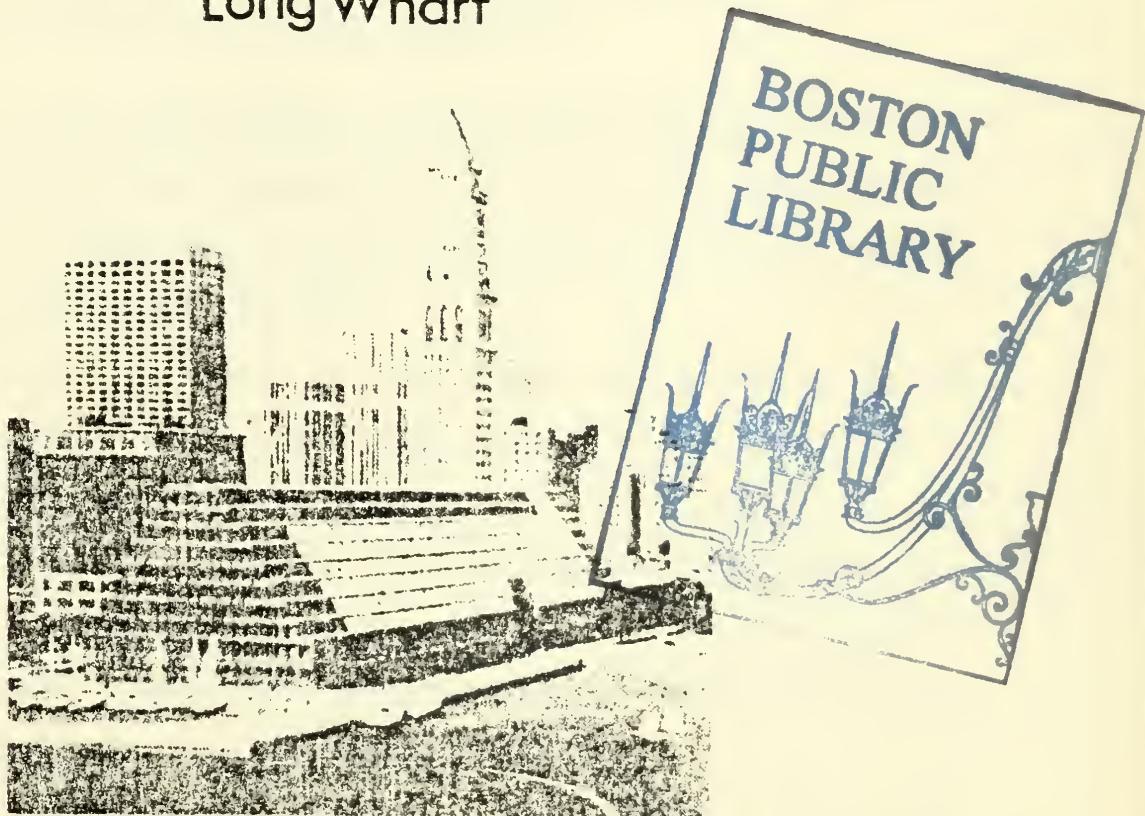
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City of Boston Finance Commission



Report on the Selection of a Developer for Long Wharf



January, 1979





CITY OF BOSTON
FINANCE COMMISSION

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January 17, 1979

SUMMARY

Today the Finance Commission issued a 73-page report based on a lengthy and detailed investigation on the selection of Zuckerman's Boston Properties as the developer of Long Wharf. Although there are numerous specific findings and recommendations relating to the manner in which the entire selection process was handled by the Boston Redevelopment Authority, the Commission's report substantiates the basic allegations made months ago - that the process was incurably tainted by blatant Mayoral intrusion, favoritism and arbitrary action by the BRA Board. The evidence uncovered by the Commission's investigation can be distilled down to six basic conclusions.

1. Early in the BRA review process, it was apparent that Mayor Kevin White had decided not only that Zuckerman was going to be the eventual winner, but also that the decision was his to make, ignoring the BRA's legal authority over development matters within the City.

2. The mayor's personal opinion favoring Zuckerman's proposal, by his own admission, was based exclusively on his subjective judgement concerning the architectural merit of the eight submissions.

3. The mayor's evaluation ignored such crucial considerations as the financial feasibility of the Zuckerman proposal, his construction cost estimates, financing commitments, intended hotel operator, the market orientation of the hotel, tax revenue for the City, and community reaction.

4. The mayor's evaluation and that of the BRA Board ignored the fact that

the BRA design staff ranked Zuckerman's proposal last, the financial staff ranked it fifth, the Director ranked it seventh overall, and the Design Advisory Committee and the Waterfront Neighborhood Association ranked it last.

5. As was claimed in the past, the BRA Board members' holdover status made them particularly susceptible to coercion by the mayor to select the Zuckerman proposal.

6. The political nature of the decision made on the Long Wharf Hotel will certainly deter developers from participating in these expensive competitions in the future.

The Finance Commission believes that the reputation of the Boston Redevelopment Authority and the viability of future development competitions in Boston demands that substantial changes be made in the selection process, not the least of which in this instance, is the revocation of Zuckerman's designation.

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BRA Board of Directors

James E. Cofield, Jr.
James G. Colbert
Robert L. Farrell, Chairman
James K. Flaherty
Joseph J. Walsh

Architectural Consultants

Peter Blake Mayor's Advisor
Earl Flansburgh
Frederick Stahl Design Advisory Committee
Benjamin Thompson

BRA Staff

Joseph Berlandi Director for Downtown Development
James Boulger Chief Inspecting Architect
John Dobie Architectural Coordinator/Design Review
Stewart Forbes Deputy Director for Development
Edward Lonergan Assistant General Counsel
Peter Menconeri Director for Economic Planning and Policy
Kane Simonian Executive Director to the Authority
John Sloan Director of Urban Design
Charles Speleotis Chief General Counsel
Robert Walsh Director
David Weiner Project Director

TitlesDevelopers/Hotel Operators

Bay Colony Properties/Aircoa
Dunfey Family/Dunfey Family
Lidapell
Marriott/Marriott
Peter Pattison/Canadian Pacific
Philopoulos Associates/Philopoulos
Perini/Hilton
Boston Properties (W' Properties)
Zuckerman-Linde/Ho' 'nns of America

Architects

Huygens and Tapoe
Graham Gund
Ganteaume and McMullen
Marriott
Sasaki Associates
Childs, Bertman, Tseckares & Casendino
Sy Mintz
Cossutta & Ponte

FINANCE COMMISSION HEARING DATES

Joseph Berlandi	September 6, 1978
John Dobie	September 18, 1978
Peter Menconeri	September 21, 1978
Robert Walsh	September 26, 1978
James J. Walsh	October 14, 1978
Robert L. Farrell	October 18, 1978
James Cofield	October 26, 1978
James Flaherty	October 26, 1978
James Colbert	October 27, 1978
Robert Gaudette	November 17, 1978
Ron Wilmott	November 17, 1978
Robert Walsh	November 20, 1978

Introduction

Real estate developers have spoken of Boston's Long Wharf as the best potential hotel site on the East Coast. It is therefore not surprising that when the city's planning agency, the Boston Redevelopment Authority (BRA) advertised that it would hold a competition for the option to build there, many developers were interested.

By January 12, 1978 eight of those who had picked up a BRA "Developer's Kit" (which includes instructions and guidelines for competition entry) were in competition with one another. By the time each had drawn plans and built models, and had spent whatever time was necessary to secure the appropriate commitments, each had already invested some \$75,000 in the competition. All would have gone well had the BRA Board of Directors selected the best proposal based on criteria in the Developer's Kit, as was initially intended. Such, however, was not the case. By mid-June, it was obvious that what was supposed to have been an open competition was instead closed to everyone but the mayor's favored developer, Mortimer Zuckerman. What was also clear was that Zuckerman would be selected because if, at the mayor's insistence, the BRA Board would fire the BRA Director for his refusal to recommend Zuckerman, they certainly would be expected to complete the sequence by confirming the mayor's choice.

Once it was apparent that the mayor's intervention had reduced the competition to a fraud, the Finance Commission voted to investigate the entire matter. Shortly thereafter, the Commission met BRA counsel in court to answer the Authority's effort to quash the Commission's subpoena. That motion was denied.

The following report is the result of the Commission's extensive investigation into the process surrounding the selection of a developer for Long Wharf. The findings, which can be found at the end of each section, expose the unprofessional judgement and action taken by both the mayor and his BRA appointees which were ultimately responsible for the waste of time, effort and dollars by everyone involved in the process. The Finance Commission hopes that the final recommendations included herein will be seriously considered and acted upon and the Commission will cooperate with appropriate parties toward that end.

Background

The proposed waterfront hotel development is slated for Parcels A-6 and A-7 of the Downtown Waterfront Faneuil Hall Urban Renewal Plan. Located on Long Wharf, these parcels lie due west of the Chart House Restaurant. Since 1965, there have been several attempts to develop both parcels, but every attempt has been thwarted by community opposition or economic instability [of the developer or the economy] or both. All those who were designated to develop the sites later had their designations revoked. Thus, in spite of the efforts and progress over 13 years, Boston is still without a hotel on Long Wharf.

On May 28, Harbor Towers Trust III (also known as the Berenson group) made a commitment to the Boston Redevelopment Authority (BRA) by Letter of Intent to develop a hotel on Parcel A-7. At that time, because of the physical condition of the area, development on the waterfront was considered to be a precarious venture, but both parties agreed that the risk would be minimized if the development of the hotel was tied to the development of Harbor Towers, luxury housing then proposed for the waterfront. In April of 1966, a new Letter of Intent was signed, conditioned on the BRA's demolition, by December of 1967, of the Quincy Market Cold Storage Warehouse, which was then located on the site. Although construction was anticipated for 1968, the BRA had problems with demolition of the warehouse and in securing the discontinuance of the old railroad freight lines which were in the center of Atlantic Avenue.

Construction of Harbor Towers began in 1969 but problems on Parcel A-7 stalled construction of the hotel. The developers had been negotiating with Sky Chiefs, a subsidiary of American Airlines, for the construction and operation of the building but ran into trouble because of the Authority's failure to demolish the warehouse, the inability of all parties to agree on the terms of the Land Disposition Agreement (LDA), and the zoning of the parcel. However, by May of 1970, the LDA was

signed between Harbor Towers Trust III and the BRA and negotiations with Sky Chiefs were virtually complete. Though commencement of construction was slated for soon thereafter, in June of 1970, when the BRA announced that a major hotel competitor was considering construction on nearby Rowe's Wharf, negotiations with Sky Chiefs came to a halt.

In 1971, the warehouse was finally demolished, but Harbor Towers Trust III was unable to secure financing for the hotel because of what was considered to be a poor economic climate for development. At this time, the prime rate had reached its historic high and real estate development was at a standstill. These economic considerations also affected development on Parcel A-6. The designated developer of the proposed office building for A-6, Waterfront Development Associates, was having problems with the financial feasibility of its project. Because of the problems the BRA was facing with respect to both parcels, they considered at that time changing the use of Parcel A-6 from commercial to residential or expanding the hotel site to include both A-6 and A-7.

The problems surrounding development of the hotel became acute by the end of 1971. Harbor Towers Trust III requested additional time to submit plans because of the BRA's failure to prepare the site on time. However, the BRA, believing that the designs were long overdo, took steps to rescind the designation. By July of 1972, the BRA had sent a letter to the developers notifying them that they were about to be de-designated for having failed to submit their plans on time.

Even before July of 1972, Harbor Towers Trust III was aware of the severity of its problems with respect to hotel development on Parcel A-7. Sometime before then, the developer began to negotiate with Stanley Barnes in the hope that he would be willing and able to develop the site. When Barnes replaced Harbor Towers Trust III as developer in July of that year, his substitution was contingent on the condition that he agree to work not only on the hotel but also on a low to medium-rent housing project on Parcel A-6.

In September of 1972, the BRA designated Waterfront Development Trust, designated developer of Parcel A-6 and gave Barnes 60 days to put a package together for both parcels. Robert Kenney, then Director of the BRA, wrote a letter to Barnes which indicated some of the problems that the BRA was having with the development of this site. He wrote:

Thank you for your patience in putting up with our seemingly snailpaced decision-making. Unfortunately, when we dig into issues, there seems to be so many factors impeding on the decision: legal, community, design, and economic that snap decisions are increasingly more dangerous.

This letter expressed new problems that the BRA faced with community representatives who had organized that summer to study the urban renewal activity on the waterfront. In another letter, Kenney pointed out that the BRA wanted the proposed developer of the site to take part in negotiations with the community representatives.

The conflicts that the BRA had with community groups, both North End and Waterfront, resulted in court action. On March 14, 1973, a Stipulation and Agreement was entered in Federal District Court (#72-1157-LC) between the Boston Waterfront Resident's Association (BWRA), HUD, the city, and the BRA. This agreement related to the Urban Renewal Plan and the procedures by which the Waterfront residents and the BRA would restudy certain portions of the Plan. At this time a restudy committee was formed which included Waterfront residents, North End residents, representatives of Harbor Towers, representatives from Barnes' group (Boston Waterfront Hotel Associates or BWHA) and the BRA.

On the same day, a Letter of Agreement was signed between Stanley Barnes and the BRA respecting the development of Parcels A-6 and A-7. The BRA had obviously extended the original 60-day timetable which had been established. The new agreement set up a strict timetable for the development of the site. The BPA stated that it would defer readvertising the parcels only if its time requirements were met. According to the Letter, "It is understood that commencement of the

¹Letter from Robert Kenney to Stanley Barnes, October 25, 1972.

hotel shall occur no later than September 15, 1973." Harbor Towers Trust III also wrote a letter to the BRA on March 14 which stated that they would not treat the negotiations between Barnes and the BRA as a violation of any obligation to the trustees nor a breach of the Land Disposition Agreement. Furthermore, the trustees agreed that upon the actual designation of Barnes as the developer of Parcel A-7, they would execute a conditional release of the Authority from all obligations under the LDA. In the event that Barnes was also de-designated, the agreement states that Harbor Towers Trust would execute a final and unconditional release to the Authority if another new developer was designated.

At this point, the stage was set for the actual designation of the Barnes Group, Boston Waterfront Hotel Associates, as developer of both parcels. During the summer and fall of 1973, the Restudy Committee worked with Barnes on the development of his plans. On September 30, 1973, the BRA officially granted tentative designation to Barnes' BWHA as redeveloper of Parcel A-7.¹ This designation was based on the condition that Barnes submit a feasibility study for housing on Parcel A-6, and for the hotel on A-7, preliminary design proposals, evidence of equity funds, and definite plans and specifications which were in compliance with the height and massing controls of the restudy committee, within 90 days of his designation. During that time, BWHA entered into an agreement with Radisson Hotel Corporation of Minnesota to supervise and manage the hotel and chose William Tabler Associates of New York to design the building. Tabler designed a 325-room, seven-story hotel with 50 on-site parking spaces, at a projected cost of \$11 million. Dissatisfied with Tabler's results, the Authority's architectural staff concluded that the proposed design should be scrapped entirely.

At the end of 1973, BWHA was asked to develop an entirely new concept for the hotel. In January of 1974, they hired architect Samuel Mintz of the PARD Team to work on the redesign of the project. The PARD Team spent more than a year working

¹In addition to Barnes, the principals of BWHA included William Beatson, Joel Wilder, and Albert Manley.

with the community to come up with a design that would be acceptable to all parties.

During 1974, Boston Waterfront Hotel Associates and the BRA faced new state and federal regulations respecting urban redevelopment. It was concluded that it would be necessary to prepare and file a full Environmental Impact Statement with the Secretary of Environmental Affairs. New regulations by the Advisory Council on Historic Preservation also had to be considered. Barnes, concerned about these delays, wrote to the BRA and the mayor asking for the renewed commitment on the part of the city to aid him in obtaining the necessary clearances to enable the project to go forward.

The specific location of the hotel on the site was reconsidered as part of the redesign effort. The outcome of negotiations between BWHA, community groups and the BRA was a decision that the use of both parcels (A-6 and A-7) was necessary to scale down the mass of the hotel. The thinking was that site expansion would minimize the impact of the hotel on nearby historic buildings.

Negotiations over the new design resulted in the signing of a binding agreement between the Boston Waterfront Resident's Association and the developer which amended the initial agreement, and created obligations on the part of each party to support the new proposal. This Amendment to the Stipulation and Agreement was entered on May 9, 1975. By its terms, the resident's association agreed to support the proposal and the developer agreed to conform to the following design restrictions:

- 1) the developer would adhere to the guidelines respecting the width, height, and massing of the hotel.
- 2) the hotel would contain 360-395 guest rooms and 200-225 parking spaces.
- 3) the design objective of the developer would be to create structure compatibility with adjacent buildings of historic significance.
- 4) the facade would be of masonry and glass.

In addition, and as part of the Amendment to the Stipulation and Agreement, the BRA agreed that it would meet at least bi-weekly with representatives of both parties

(the BWRA and BWHA) to report on the status of the design review process. Prior to final approval by the BRA, the residents would be given the opportunity to make written suggestions, comments, and recommendations on the proposed final design. The BRA also agreed to explain to the residents, in writing, why their suggestions were not accepted if such proved to be the case.

In October of 1975, the Environmental Impact Statement for the PARD Team design was approved by the Secretary of Environmental Affairs. However, plans for the hotel were stalled because of problems that Barnes was having with both Raddison (his hotel operator) and the BRA on the terms of the new Land Disposition Agreement. Barnes' BWHA began to negotiate in early 1976 with Marriott Corporation who had expressed interest in operating the hotel. Joel Wilder, one of the principals of BWHA, was also in regular contact with Connecticut General Life Insurance Corporation, which was interested in financing the project. By June of 1976, an agreement with Marriott was essentially secured and the developers were optimistic about commencing construction in 1977.

By the fall of 1976, serious new difficulties began to arise concerning the proposed hotel. BWHA was having problems with the financial feasibility of the project. They were claiming that because of the real estate tax climate in the City, it was difficult to secure financing for any development. During this period the mayor had called a moratorium on Chapter 121A tax agreements. Without the tax certainty that comes with a 121A agreement, they claimed, it was virtually impossible to put together a financing package in the City of Boston. There were additional problems which related to the Land Disposition Agreement. BWHA was informed that they would have to assume the responsibility for certain projects (such as completing the Walkway to the Sea, relocating and redesigning the MBTA station and improving the State Street Extension) that the BRA had originally agreed to do. This resulted in their need for additional planning time, and added substantially to the cost of the project.

The BRA was very much concerned about the progress of the project, and on November 1, 1976 a letter was sent from Robert Kenney of the BRA to Barnes notifying him that the BRA would commence formal proceedings to rescind his designation if evidence of firm financing was not submitted within 15 days. On November 3, 1976 Barnes responded by asking the BRA for an extension of time and cited the additional requirements which he was asked to fulfill under the new LDA. Kenney agreed to extend the time to December 6, 1976. He wrote:

I urge you not to misconstrue the import of this letter. Unless you are able at that time to submit convincing documentation of your ability to expedite this development, I will be compelled to examine the several viable alternatives available to this Authority.

In January of 1977, Robert Walsh moved from Deputy Director to Director of the Boston Redevelopment Authority. His first activity as Director was to review and update the progress of development on several parcels throughout the city, including Parcels A-6 and A-7 of the Downtown Waterfront Urban Renewal Area. After reviewing the Long Wharf Site, Walsh concluded that the developer had had time enough. Though Barnes and the BRA had finally reached agreement on design, and though Barnes had finally managed to secure both community and state environmental approvals, he had been unable to pin down sufficient monetary backing to make the project work. The mayor's moratorium, which put a halt to the granting of special tax status under Chapter 121A must have had much to do with the developer's inability to secure financing because the Director conceded, and the Chairman, Robert Farrell, concurred that lending institutions were and still are reluctant, if not altogether unwilling, to lend money for development without the guarantee that the developer will be awarded favorable tax treatment under Chapter 121A. Walsh told the Finance Commission that he asked Mayor White on several occasions to lift the moratorium, which was imposed in the fall of 1976 before Walsh became Director, but his requests were ignored until months after the de-designation of Barnes. Both Walsh and Farrell felt that Barnes simply lacked the wherewithal to put the package together, but both also indicated that the mayor's moratorium was one key

factor in Barnes' inability to see the project through.¹

Early in the spring of 1977, Walsh sent at least two letters to Barnes urging him to provide the BRA with some indication that progress on Parcels A-6 and A-7 would be forthcoming. He also explained that such letters were to be taken as notice, required under the Land Disposition Agreement, that if progress was not imminent, steps would be taken toward de-designation. The BRA was also hoping that these letters would compel Barnes to produce a successor developer who would be capable of implementing the project. In fact, in a memorandum to Robert Walsh, Edward Lonergan, counsel to the BRA wrote:

I am attaching herewith proposed letters to the developer of the captioned parcel and to the prior designated developer. It is my hope and expectation that these letters will expedite a resolution of the problems confronting this development by compelling Mr. Barnes to produce a successor developer with the capacity to implement the project. However, in the event that Mr. Barnes decides to contest the dedesignation process, I presume he will file an action in the Suffolk Superior Court seeking injunctive relief. I am hopeful that such relief would not be forthcoming. If litigation is commenced, I am of the opinion that we will know the outcome within four to six weeks of the dedesignation.

One other matter which must be appreciated is the fact that the Trustees of Harbor Towers Trust III have a technical claim to be reinstated as developer. I do not believe that these trustees have any desire other than recouping their expenses, which expenses I am informed are approximately \$70,000.

Although I believe that it is appropriate to forward the attached letters, because there remains a possibility that Mr. Barnes may be able to effect an agreement with the Marriott group or one other investment group, this matter should be processed in confidence and without publicity. Since this matter could result in litigation, it is proper that it be handled in an executive session.

Lastly, I have been informed that Mayor White has agreed to meet with representatives of Marriott during the last week in January.

¹Another factor in the decision to de-designate Barnes was brought to the attention of the Finance Commission by one witness who said that Marriott had called with the mayor urging him to encourage the board to rescind the developer's designation. Board Chairman, Robert Farrell testified that he spoke with agents for Marriott at least twice during the summer of 1977.

Though Boston Waterfront Hotel Associates continued to work on a financial package for the development, the BRA was not satisfied with the evidence that Barnes was able to supply. On March 3, 1977, the BRA Board voted to rescind the designation of BWHA. On March 15, the BRA voted to give Harbor Towers Trust III ten weeks to come before the Authority with any intentions they might have with respect to the hotel on Long Wharf.

Once Barnes was de-designated, it became apparent that many hotel operators were interested in the Long Wharf Site. Some, Walsh said, had referred to Long Wharf as the best place for a hotel on the East Coast. During the spring and summer of 1977, Barnes, Wilder and Marriott worked on the hotel package. Barnes continued to look for financial backing and said, by letter to a mortgage broker dated May of 1977, that he had reason to believe that if he could demonstrate to the BRA a substantial new commitment in funds he would be re-designated the developer of the site. Although a tentative agreement was reached with the mortgage broker, the BRA reviewed this agreement and concluded that there was still no compelling evidence of Barnes' ability to proceed with the project.

At a board meeting of the Boston Redevelopment Authority on September 22, the day that Harbor Towers Trust was to lose its rights to the site pursuant to a vote taken by the board on September 8, Philip Nexon, counsel to the designated developer, appeared before the board to request the board's patience in granting another extension of time.¹ According to the Chairman, Nexon presented extensive and well-prepared, but nevertheless unconvincing documentation explaining the history of attempts to develop the site, the factors that had hampered the developer's progress, and finally, the matter of recent negotiations between the developer and Perini Corporation, who was willing and able to get the project built. According to Nexon's brief, David Perini and Joel Wilder (who had worked on the project

¹Nexon said that he was requesting that board action be postponed because it was the Jewish Holiday of Yom Kippur and many of the people who had an interest in the project could not be present at the meeting.

with Barnes for years) had reached an understanding with Barnes "which would enable them to succeed to Barnes' rights in certain important aspects of the proposed development, including his rights in the Environmental Impact Statement and his rights in the PARD Team architectural materials." Neson went on to say:

As the foregoing history demonstrates, it is plain that Mr. Barnes has brought the project through the critical areas of development. It would take anyone who did not succeed to his rights in key aspects of the materials years to reach the same point. Moreover, because of the Stipulation entered in the Federal Court litigation, the project which Mr. Barnes has brought to this point has protection which no other proposed development could acquire without extensive negotiation and legal work.

Finally, Neson said that representatives from Perini Corporation would be present at the BRA board meeting scheduled for September 29.

By September 29, the board had had enough with postponements. They wanted the site developed and they were looking for speed. The board's impatience, however, makes it difficult to understand why the board voted, at that time, to readvertise for proposals rather than to allow Barnes to sell out to Perini, especially since Perini was prepared to use the design that had already been through community review and had received all necessary state environmental approvals. Robert Walsh said that there was no inherent reason to advertise the site; that there was no regulation requiring the BRA to do so. Yet Farrell said that he leaned heavily on 1) HUD regulations which prohibit the sale of designations from one developer to another and 2) his belief that such transfer would be improper.

With respect to his first concern, Farrell said there was a unanimous feeling among the board members that to allow Perini the right to buy out Barnes would be contrary to HUD regulations. The Finance Commission was informed, however, that the only HUD regulations that apply to the transfer of rights or interests can be found in Article 5, Sections 502-503 of the "Terms and Conditions which Accompany the Contract for Sale of Land for Private Development" and that

such regulations prohibit the transfer of more than 10% of a redeveloper's interest in a development parcel to any other party without the express and written consent of the BRA board.¹ Clearly, such regulation would not halt the board if it had otherwise intended its approval for such transfer. In addition, no other board member had any knowledge of any HUD regulation respecting the transfer of development rights and/or interests, nor could any other board member recall any conversation in which such matter was discussed.²

¹U.S. Department of Housing and Urban Development, "Terms and Conditions, Part II of Contract for Sale of Land for Private Development," HUD - 6209B, September 1969.

²When asked about the factors that resulted in the board's de-designation of Barnes and its decision to hold an open competition, James Colbert could not recall anything about Barnes. In fact, as far as he was concerned, this was the first time that the board had so much as discussed the parcels in question. The Finance Commission received the following testimony from Colbert respecting his knowledge of the history of the site:

Q Had there been any other person or group or developer connected with the parcel before there was a decision to open it up to competition or was this the first that you learned of this parcel?

A I don't think - the first I recall of it was when we advertised for proposals.

Q Do you remember when that was?

A I would say that it was sometime in 1977. I don't recall exactly, no.

Q Do you know the name, Stanley Barnes?

A Stanley who?

Q Barnes.

A How do you spell that?

Q B-A-R-N-E-S.

A Do I know him? No.

Q Have you heard of that name?

A No.

Because of what was heard with respect to Barnes, the Finance Commission did not rely on Colbert's statement that a discussion about HUD regulations did not take place. It did, however, note the ability of other board members to recall details of that time period. Their ability to do so but their inability to recall that discussion led the commission to conclude that such discussion did not transpire. Farrelly's statement, wherefore, that there was a unanimous feeling among the board members with respect to this issue appears to have been based on speculation, not fact.

With respect to the second concern, which deals with the impropriety of such action, two points come clear:

1) At the meeting of the Boston Redevelopment Authority on September 20, 1973, when Stanley Barnes was designated to assume all the rights and responsibilities with respect to the development of this site (rights that had been held by Theodore Berenson of Harbor Towers Trust) there was a unanimous vote of the board to allow him to do so. Farrell, though not Chairman at the time, had been a member of the Authority for two years and voted at the meeting. Thus, the history of this project shows that the precedent allowing the transfer of development rights without competition had already been set, and that Farrell was well aware of it because he had been a participant in the vote in which the precedent was set.

2) Farrell said that he felt that it would not be improper, nor would it be a violation of HUD regulations for Barnes to take on a new partner. His fundamental objection was to the outright transfer of designations. James Flaherty (board member) concurred with Farrell about the impropriety of a transfer but stated at a hearing before the Finance Commission that he understood that Perini and Barnes were negotiating toward a partnership and not an outright transfer.

Findings

1. The BRA board members did not understand the terms of Perini's involvement when they voted to rescind the designation of Harbor Towers Trust.
2. The BRA board was unaware of its legal alternatives vis-a-vis the site in question at the time of its vote to hold a competition.
3. The Chairman's statement that the transfer of development rights and responsibilities after tentative designation would be improper is not consistent with his past voting record.

On September 29, 1977, the BRA voted to advertise the site and to allow developers 45 days to prepare their submissions. When asked about the 45-day time allotment:

1. James Cofield, the governor's appointee, felt that three to six months would have been appropriate for a project of this scope.
2. Robert Farrell could not recall any discussion regarding the time period but felt that the 45-day period was not unusual.
3. James Colbert said that to the best of his recollection, applicants are given three months to prepare submissions for this type of site, but testified that the Director probably recommended 45 days.
4. James Flaherty did not recall how much time was given to developers to prepare their submissions but said that the normal time period was thirty days. He explained the decision by saying, "Due to the intensity of the project, they probably expanded it to 45 days... I think we decided on the basis of a recommendation made by the director."
5. The Director said the following"

The 60-day period was my decision which was contrary to the vote of the Authority. The vote of the Authority was for a 45-day period.

Q Would you say that a 45-day period is much shorter than normal for a competition?

A It depends. For a major hotel like that - of course it is.

Findings

1. Though the sum total of current BRA board service exceeds 44 years, there is still some doubt as to the appropriate time allotment for developers to prepare submissions for competition. (The years of service add up as follows: Cofield 2 + Colbert 21 + Farrell 8 + Flaherty 5 + Walsh 8 = 44).
2. The competition got off to a bad start because many developers felt the need to compromise quality for speed. Greater consideration at the outset to the connection between time, creativity and quality might have reduced the number of problems faced by staff later on.

The Developer's Kit

The seventy-page document which serves as the developer's kit for the Long Wharf site was prepared by BRA staff and was to be the guidelines for applicants to use in preparing their submissions. The Downtown Waterfront - Faneuil Hall Urban Renewal Plan takes up a good deal of the package, but the first portion sets forth the history of these two parcels (A-6 and A-7), the criteria for selection, the design objectives and controls, and the required financial documentation which would form the backbone of the application. According to testimony from the BRA staff, Joseph Berlandi, Director for Downtown Development, worked with project architects, engineers, financial analysts, traffic people, and legal counsel to assemble the materials that would go into the kit. Other people were responsible for different portions of it. John Dobie (Project Architect) wrote the design controls; John Sloan (Director of Urban Design) reviewed the design controls as written by John Dobie; Charles Speleotis (Chief Counsel) was responsible for the language respecting compliance with the terms of the Stipulation and Agreement; Stewart Forbes (Deputy Director for Development) was responsible for that part of the kit soliciting financial information and documentation; Robert Walsh (Director) was ultimately responsible for the entire package.

The Finance Commission spoke with several BRA staff people about the contents of this kit as compared to the contents of kits used for past BRA competitions. According to the commission's witnesses, most kits are fairly standard, but this one differed in certain respects. First, developers were asked to submit far more financial documentation than is normally expected. As reported by Joseph Berlandi, "There was definitely an objective that we wanted to extract from each developer, as much as we could now in terms of economic posture."

Second, developers were urged to read and comply with the provisions of the Stipulation and Agreement. Never before had the staff been asked to write a kit in which the design controls had been the subject of, and perhaps limited by,

court litigation. Their lack of experience in this area caused major problems both for them and for competitors throughout the competition.

For the most part, the Finance Commission found that the kit was comprehensive and well-written. However, the language used to urge compliance with the Stipulation and Agreement, and the manner in which that entire matter was handled was a fatal flaw in the process. Part C of the Introduction, which tells the history of the site and makes mention of the court suit, points out that applicants should read the Stipulation and Agreement and that failure to comply with BRA requirements has, in the past, been cause for dedesignation. The exact language is below:

This parcel was considered as part of the Boston Waterfront Residents' Association, Inc. et.al. vs. Carla Hills, et.al, U.S. District Court, District of Massachusetts, No. 72-1157, an environmental law suit which has been settled by 'Stipulation and Agreement' (a copy of which can be reviewed at the Authority). The maximum controls established herein and by the urban renewal plan resulted from that litigation.

Previous redevelopers have been designated for these parcels but have been unable to comply with the requirements of their designations. Their inability to meet Authority requirements has resulted in the Authority terminating their designations.

The design objectives established in court were mentioned again in Part III of the kit entitled "Guide to Development and Design of the Parcel." There, it was "strongly recommended" that developers follow the height and massing requirements set forth in that section. (A copy of that section is attached. See Appendix A)

One of the commission's first concern with respect to this competition, in light of the history of the parcel and the controversy surrounding the submissions, was that the kit did not categorically require compliance with the terms of the Stipulation and Agreement. It is hard to understand why a copy of the Stipulation was not included in the kit, but the Finance Commission is now aware that the decision to omit the Stipulation, and the use of ambiguous terms was purposeful and was reached because of 1) the fear that tight controls would hamper creativity and 2) the fact that the BRA counsel were uncertain about whether or not the Stipulation was still in effect.

With respect to the first concern, both John Dobie (Project Architect) and John Sloan (Director of Urban Design) felt that excessive restrictions would cause applicants to copy the massing models that had been part of the original Stipulation and Agreement. During the hearing at which the Finance Commission received his testimony respecting his views on this matter, Dobie said the following:

...I remember having a long discussion with Charlie Speleotis about this very issue. I remember what I was afraid of... if we essentially handed everyone the exact massing diagrams of the model that were the exhibits in the Stipulation and Agreement...we would get eight or ten or twelve identical proposals. And I remember sitting in Charlie's office one afternoon...we were trying to come up with some sort of language that would leave the individual architects some flexibility to look at the site in a fresh way...I remember very distinctly that I was worried...that every proposal would turn out to be a carbon copy of this cardboard massing model which at the time we felt was not totally there.

Later in the hearing, the commission heard more testimony respecting this issue:

- Q Let me ask you this. And maybe this is a legal question but you can tell me if you had an opinion on it... Was it your view that the actual massing models, the ones that were sketched out...because they were made part of the Stipulation and Agreement - that if you'd made the Stipulation and Agreement mandatory...the terms of it - that every single design would have to copy those [terms]?
- A Yes, that was my fear, to be perfectly honest.
- Q So did you feel that...an architect couldn't come up with a unique design for that parcel under the Stipulation and Agreement?
- A I think there had to be more flexibility than insisting that everyone meet every line on these two exhibit drawings, yes.
- Q I see - wait a minute - we had not understood that. At least I hadn't understood that. Why did the Authority agree to the Stipulation and Agreement if the hotel couldn't be designed to fit in those -
- A Oh, it's hard to say...it's perfectly possible to have a hotel fit in that envelope, and as a matter of fact, some of the submissions, as we'll discover, do exactly fit in that envelope...I myself had a problem with having a competition and inviting what we hoped would be nationally and internationally known architects to compete and then telling them down to the every line what the massing of the building had to be.

Q You know, it seems surprising to me...that when the BRA entered into the Stipulation and Agreement, which seemed to bind its hands very largely with this actual massing model so far as picking a hotel - that there was at least a rough design of a hotel that met the massing requirements - you were concerned, and I can see why, that if the Stipulation and Agreement meant what it said it meant, well then you were not going to get any real competition, except maybe economically, but not in design - so it seemed to me surprising that the BRA chose, considering the history of this matter and the Stipulation and Agreement, they chose to have a competition at all. Why have a competition when the specifications, say for a product, allow only one person to win?

A I can't address that. I was told that there would be a competition.

Q So then you did this in order to make the competition meaningful?

A That was my view, yes.

With respect to the question of standing, we asked Joseph Berlandi if he thought that the terms of the Stipulation and Agreement were to be understood as mandatory requirements. In explaining that he reached no conclusion on the matter, he testified:

I had no feeling. I was not familiar with the court stipulations because I had never worked on them - that all occurred years before I had my first assignment on the waterfront. When it came to provisions in the developer's kit respecting the court stipulations, that was submitted to the General Counsel's office and he was responsible for bearing the language and improving the developer's kit in that respect. I had little, if anything, to do with the wording of the court stipulation.

The Finance Commission pursued this matter still further at John Dobie's hearing. The relevant comments made by his attorney, Edward Lonergan, Assistant Counsel to the BRA, are included below:

May I suggest that your staff will have to review the documents themselves and I suggest that there is no black and white situation on this. I would just refer you, for example, the stipulation says if the attached agreement is terminated, then the amendment is terminated. So you get into a question - Is, in fact, that particular amendment and stipulation in legal effect or is it more of a guideline evidencing the work that the community had done with the Authority staff over the course of many years. And I'm not attempting to answer that question one way or another.

Q Whose function is it to determine or to offer an opinion on whether or not the stipulation and agreement or the amendment to it is in effect?

A That would - at the request of the Authority and or the Director - that inquiry - if it was made, would go to the chief counsel who is Mr. Speleotis...

Q Was that ever resolved?

A I have no idea whether or not that inquiry was made. And if it was made, what opinion might have been given.

Q It seems interesting to me, or problematic that a developer's kit would be written that would include a stipulation and agreement when the BRA didn't know if it was still in effect.

A I'm not saying that it was in effect and I'm not saying that it wasn't in effect.

In spite of the BRA's efforts to encourage a degree of flexibility, of the five developers the Finance Commission spoke to, all felt that the Stipulation and Agreement was in effect. All claimed to have read it and to have directed their architects to comply with its terms. Robert Walsh, by his own statement, never asked the BRA counsel for an opinion about this matter because there was never any doubt in his mind that the Stipulation and Agreement still stood.¹ The Board members were obviously convinced that the provisions were in effect because each one of them assured us that the final product would not be approved unless it complies with the terms of the Stipulation and Agreement.

¹Walsh did say, however, that in hindsight, and given the controversy surrounding the project, he probably would have insisted upon different language in the kit [respecting the stipulations and compliance with it.]

Findings

1. The BRA staff was directed to hold a major design competition but was unclear about the reasons for doing so since the essential components of an acceptable package had already been determined in court.

2. Though the end product had been predetermined by court action, the staff, in order to justify its mandate, created a developer's kit, which, by its vague terms, gave some of the developers the impression that there was room for flexibility in design. In the meantime, the director, who was ultimately responsible for the kit, felt that a design which did not meet the requirements of the Stipulation and Agreement could not be recommended.

3. Though BRA counsel never resolved the status of the Stipulation and Agreement, this issue was not brought to the attention of either the director or the BRA board. This difference in attitude about the status of the Stipulation between the staff, the director, and the board members necessarily meant that they all would be using different standards for evaluation.

BRA Review

Review of the eight submissions was a five-phased operation which began in January of 1977, soon after the materials were submitted and ended late in June. The process included:

1. Design critique
2. Financial analysis
3. A presentation by each development team before the staff
4. A presentation by the staff before the BRA board, and
5. Internal meetings to discuss the merits of the submissions.

Design Critique

John Sloan and John Dobie critiqued the eight submissions. As Director of Urban Design, Sloan was obliged to consider more than the architectural merit of each proposal. He also noted the way the building stood in relation to surrounding structures and estimated the impact of each on the project area. After evaluating the models and site plans, Sloan and Dobie ranked the proposals "based on criteria included in the developer's kit."¹ Sloan then called a meeting of the Design Advisory Committee, a group of three prominent architects who work in Boston, who serve on the Committee to offer their professional judgement on matters of public concern. The Committee met on February 28 at the BRA site office to review the models and to discuss the merits and drawbacks of each. The minutes that were taken at the meeting were attached to a letter directed to Robert Walsh, drafted to communicate the findings of the Committee.²

Sloan told the Finance Commission that only the Marriott design conformed to the terms of the Stipulation and Agreement. When asked if he had ever considered disqualifying those who did not address themselves to the court stipulation, Sloan

¹As stated in their memorandum to the Director. See Appendix B.

²The minutes of that meeting are attached. See Appendix C.

said, "I wouldn't do that. All of the proposals could be modified to meet the criteria." Sloan went on to say that it was the job of the general counsel to disqualify if such was deemed appropriate.¹ Robert Walsh testified that he knew that many of the proposals did not meet the terms of the stipulation but that he never considered disqualifying those not in compliance, even though there was no doubt in his mind that the stipulation was still in effect. He said that each of the proposals would have needed certain changes but that problems arising from deviations, from both the court stipulation and the urban renewal plan, could have been solved during design review, after tentative designation. It is therefore clear that the Director would have been willing to recommend a developer for tentative designation even though his design did not meet the terms of the court mandate because such design could meet those terms if sufficiently altered. The same sentiment was expressed by most of the board members at hearings before the Finance Commission.

Findings

1. The BRA erred in allowing all participants to remain in contention even though some either ignored or failed to meet criteria upon which much of the competition was to have been based.
2. If the tentative selection was to be influenced by how well the proposal conformed to the stipulation and agreement, as was Walsh's assumption, then the competitors should have been in compliance prior to tentative designation. "Design review," which comes after tentative designation, is the time for refinements, not for bringing a scheme in line with some of the most basic components of the original selection.
3. It is entirely possible that when the design has been modified sufficiently

¹BRA general counsel was not inclined to disqualify anyone for non-compliance with the stipulation since, as stated earlier, he was not sure about the status of it.

to meet the criteria, it will be less appealing than all of the others that were surpassed in the original selection.

4. The design that is finally built will not be the same design that was selected by the board, nor will it be the same design against which the others competed.

5. The BRA, in acting unfairly and improperly in this process, set a precedent that will discourage developers from entering future competitions in the city.

Financial Analysis

Early in March, Stewart Forbes and Peter Menconeri discussed the proposals generally and the manner in which they would be evaluated from a financial standpoint. Menconeri developed a format to include construction cost estimates, how firm the estimates appeared to be based on the contractor's letter, the developer's equity position, the commitment of other partners, and the relative strength of the mortgage commitment. Once the format had been established, each developer was ranked on the basis of its criteria.

Presentations and Submission Changes

On March 9, Joseph Berlandi wrote a memorandum to Robert Walsh recommending that developers be invited to present their proposals before the BRA staff. Though developers had been told to anticipate that the final decision would be based on materials submitted by January 12, Berlandi did not believe, when he wrote the memorandum, that the BRA had sufficient information from a design or economic standpoint to select the best proposal. In fact, Berlandi said, "There appears to be no individual submission which is that much better than the others at this stage." In support of his suggestion, Berlandi wrote:

I am aware of the design ratings provided by the staff and would suggest that they be considered only as preliminary. We all know that the initial design proposal in a developer's submission is most always changes as the development and construction process proceeds. Therefore, I think it might be precipitous to eliminate any one at this time on the basis of design. The developers have all assembled very good teams and have spent considerable monies in preparing their submissions. I would suggest that we give all of them an opportunity to present their specific proposal to us at which time we would have a fairly good idea of questions and issues. The process would be completed within a two-week period and from that we could better determine which team and concept we feel more comfortable with. This approach would also serve to diffuse [sic.] any emotional reaction by those ultimately eliminated since they would all have been given the opportunity to personally express a proposal for which they have expended a considerable sum. It would provide them with their "day in court" which I believe they are seeking.

Unlike the E-9B proposal where the hotel submission was truly unique, in this instance we have considerably limited the development proposals to a particular use, a given volume, a given height and mass, etc. Whatever specific variations exist in the design solution can best be understood by the Authority through a review and presentation process. This review process will assist us in determining if design changes should be made and what effect such changes would have on the economics of the particular proposal and the ultimate return to the city. My feeling is that a selection should not be based on the information we presently have and that the developers would greatly appreciate the opportunity to explain their design and economics approach. We can only learn from this process and it should result in a decision based upon a comprehensive examination of the proposals.

Walsh, who concurred with Berlandi, authorized him to schedule the presentations.

According to several staff members, this process was not standard procedure but it had been used before. Each session lasted two hours and began with presentations by the developer, his architect, his hotel operator, and his contractor.¹ Later, the staff had a full hour to question and to comment on the package. Most of the staff members thought that the presentations were useful because they helped to identify the commitments of all participants on each development team. Comments made by several developers in subsequent communications indicate that they also thought the time was well-spent.

¹Present at these sessions were Robert Walsh, John Sloan, John Dobie, Peter Menconeri, James Boulger, Joseph Berlandi, Edward Lonergan, and David Weiner.

Though we do not criticize the concept of inviting developers to present their proposals before the staff, the Finance Commission finds fault with the manner in which the process was handled. It has become clear that the Director's failure to set up ground rules for discussion all but guaranteed some competitors the right to take liberties that never should have been so much as considered. The Finance Commission is particularly concerned with the impression given some developers that changes in submissions would be accepted and reviewed by the BRA staff.

All those developers who made changes in their proposals after the due date presumably benefitted from the opportunity to review in detail the submissions of their competitors.

With respect to changes that were made by developers prior to their presentations but which were submitted during the presentations, perhaps the problem was best stated by John Sloan in a memorandum circulated among the BRA staff.

"I have a serious problem with this proposal because in fact I do not know which of the two schemes to criticize. The first scheme that was presented (at the time limit for the competition) was not well worked out. ...The scheme presented at the review session was completely different and had, in fact, worked out most of the problems... I would feel that if I had to rank the first scheme that was presented, along with everyone else's proposal, that this proposal would end up with a very low score as far as parti and functional layout. If, in fact, I were to criticize the second scheme, I would rank the scheme high in its basic response to the criteria.

Sloan made several attempts to find out which submission to review. He told the Finance Commission that he questioned both the Director and his Chief Counsel, Charles Speleotis, but that neither of them had an answer. Walsh, however, testified as follows:

We had a conversation about it and I think I probably said to him 'go ahead and review the second proposal,' because it was apparent to me at that point that the Lidapell proposal was not in the overall ratings, was not going to be one of the top anyway, so I really considered it a moot point.

Boston Properties, which had submitted an incomplete proposal made substantial revisions in design, changed financial materials and submitted new documents in support of the original package. Unlike those who had made changes prior to their presentation, Boston Properties made their changes following their presentation and as a result of comments and suggestions made by the BRA staff during the presentation. Subsequent to April 18, 1978, the date of the presentation, the BRA received from Boston Properties:

- a) a painting of the proposed hotel, showing for the first time a glass-enclosed atrium, under which pedestrians could walk to the waterfront, and;
- b) a binder of additional materials including:
 - 1. a letter from Barkan Construction Company, Inc. indicating its interest in participating. (On January 12, Zuckerman was without a contractor).
 - 2. construction cost estimates from Barkan showing that the hotel could be built for \$18 million (\$3.5 million or \$10,000 per room higher than Zuckerman's original estimate),
 - 3. documentation that there was an additional 20,000 square feet of retail space¹ (not included in the original submission), and
 - 4. an additional commitment from Boston Properties of \$3,882,500.

When asked how he directed the staff with respect to consideration of the above, Walsh said, "I told them to go ahead and include the revised material as far as those two proposals were concerned [Lidapell and Zuckerman] but I don't consider that very significant in terms of the overall evolution of the development process and how the proposals were ultimately rated." Walsh's rationale was as follows: Since both schemes were so far out of contention, whether or not to consider the revisions was a moot point, i.e. nothing that they could have added would have placed either one near the top. Yet when asked to discuss the

¹The omission of the space in the original scheme was explained as follows: "The program represents some reallocation of areas which took place during the completion of the design process and could not be picked up with precision on the submitted floor plans."

practice in general, Walsh said:

"It's a common practice for architects, for lawyers, for the engineering people, financial people to meet with the Authority's - the counterpart in the Authority's staff to talk about the submission. I don't recall that a model was changed, as such. There was one submission that made a dramatic change - The Lidapell submission was changed dramatically from when it was originally submitted until the time that it was presented to me orally, which was probably four to six to eight weeks subsequent to the January 12th due date. I didn't see anything extraordinary in that. I didn't see anything extraordinary in other submissions that could stand some improvement, that probably were deficient in one area or the other. I was really trying to get the best product for the site. Again, I don't think it's anything extraordinary. I think it's standard operational procedure..."

The process is not something that is very well-defined and really by design, is not very well defined cause you have to have a very good, close working relationship as you go through the process to get the best product. ...Again, we were looking for the best product and if you could work these proposals to a better point, then fine."

In conclusion, Walsh added that just about all of the developers asked if the BRA would accept revisions.

The Finance Commission spoke with many of the participants in the competition. One developer said that he had no idea that changes would be accepted and not ask because the possibility of being allowed to do so never entered his mind. Another, in a letter to Joseph Berlandi wrote,

"I want to go on record concerning compliance with the 1973 U.S. District Court Stipulation and Agreement.' It was the intent of Bay Colony, and that intent was reflected in our earliest instruction to Huygens and Tappé, to present an architectural design entirely consistent with the Agreement."

Others admitted to having made "minor" additions to their models but were sharply critical of the BRA for having allowed one developer to remove his model from BRA premises after the due date to make the most basic changes to functional layout.

Findings

1. Revisions to submissions either should not have been accepted or should have been permitted in accordance with rules familiar to everyone in

the competition;

2. Evaluations should have been based on only those materials submitted on or before January 12;

3. A policy incorporating findings one and two should have been written into the developer's kit, and finally;

4. Presentations should have been used only to clarify materials turned in on time, not to revise them or to add new materials.

The Presentation Before the BRA Board

On May 18, 1978, three BRA staff representatives met with three of the board members and Executive Director Kane Simonian to discuss the eight proposals for the Long Wharf Site. Present at the BRA site office at that time were, from the board, James Cofield, Robert Farrell, and James Flaherty. Representing the staff were Robert Walsh, John Sloan, and Peter Menconeri.

According to Sloan and Cofield, the group spent a total of about an hour reviewing all of the models. Walsh, however, recalled having spent over two and a half hours at the site office that afternoon, devoting some twenty minutes to each proposal. He said that all of the non-design aspects of the proposals, including financial feasibility and community sentiment were discussed. Nevertheless, if such non-design matters were discussed, they must have been given little attention for James Flaherty could not remember if Menconeri, Director for Economic Planning and Policy, spoke at that session and Farrell could not even recall Menconeri's presence there at the time. Walsh, Menconeri, and Cofield each testified that a staff-prepared analysis of cost estimates and revenue projections was distributed to the board members at that time but neither Farrell nor Flaherty could recall having received it.¹

¹Flaherty left a few minutes early and may have missed the distribution. The document, entitled "Financial Analysis of Waterfront Hotel Proposals (A-6/A-7) is attached. See Appendix D.

Internal Meetings

The BRA staff had at least two internal meetings to discuss the merits and drawbacks of each submission. All staff persons who were directly involved with the evaluations of the hotel proposals were present.

Additional Findings

It is important to note at this point that the BRA staff and the Director never determined the form of the ultimate recommendation to the board. Although this issue had been discussed by the staff, Walsh never formally decided if he would recommend one proposal to the board or if he would present three or four of the top-ranked proposals to the board for its selection of the developer. Using hindsight, if the review process had taken a "normal" course, this would have been an important decision to make because it could have affected the ultimate product chosen to be built on the site. If the staff had eliminated the weakest proposals and had gone back to re-evaluate those remaining, the BRA would have been in a good bargaining position to effect changes in design and financial aspects since the semi-finalists would have been forced to compete still further against one another. If instead, only one proposal had been recommended for tentative designation, the Authority's position would have been weakened considerably, since the competitive part of the process would have ended. This issue is moot in this particular instance because the Director did not have the opportunity to make his recommendation, but in future competitions, it is important that the staff know in advance the selection procedure to be followed by the Director.

The Criteria That Should Have Been Used

When the three board members who voted for Zuckerman's package testified before the Finance Commission about their participation in the hotel selection process, each one claimed to have been thoroughly familiar with the proposals and the staff evaluations.¹ By their own statements, all three were ready to vote on the day that James Colbert moved to make the tentative designation. How each board member could justify his vote at that time, if at all, for Zuckerman's proposal was the subject of much discussion and was a matter of intrigue, especially in light of the following:

A. The BRA Board Voted Without First Having Heard the Director's Recommendation.

When the Board voted on October 5, 1978 it had received no recommendation from the Director. In fact, the final staff recommendation had not yet been written. This is particularly significant because in the years that the current members have served on the BRA Board, there has never been any other instance in which the board has taken action of such importance without first having heard or seen a recommendation by the Director.²

B. Zuckerman Fared Poorly in the Staff's Financial Evaluation.

Most of the board members saw at least some of the early staff evaluations. One memorandum, directed to Robert Walsh, but nevertheless seen by some of the board members, was prepared by Stewart Forbes, Deputy Director for Development, and showed the financial strengths and weaknesses of each submission.

¹ The only board member who was not at the meeting was Joseph Walsh. Walsh testified that he had a trial in Fall River, Mass. on the day that Zuckerman was designated.

² The only possible exception of which the Finance Commission is aware was the BRA's tentative designation of a developer for a parcel in Park Square in the summer of 1978, at a time when the Authority was without a Director.

On the first page of his twelve-page memorandum, Forbes noted that Jim Boulger (Chief Inspecting Architect for the BRA) had estimated the total development cost of the hotel at roughly \$65,000 per room.¹ (See Boulger's estimate - Appendix E.) Forbes went on to point out that uncertainty about actual costs always raises questions about financial commitments. If financial feasibility was an important aspect to consider, as was claimed by the board, then such statement by Forbes should have been sufficient to urge the members to check the accuracy of cost estimates as evaluated within the memo. Anyone who had so much as bothered to read Forbes' analysis of Zuckerman's proposal would have to have noticed the following: "[The] proposal contains a strong financial commitment to a project that could be built at a total cost not to exceed \$54,000 per room. However, there is no indication that the design proposed can be built for this figure. (Emphasis added.)²⁻⁴

¹Boulger also ranked the proposals based on the models that had been submitted. On a scale where first was best and eighth was worst, Zuckerman came in sixth. The Finance Commission does not contend that any board member saw Boulger's work because such work was not mentioned at any of the hearings. However, in view of what Boulger had to say about the matter, the commission questions the fact that his evaluation was not brought to the attention of the board.

²John Sloan told the Finance Commission that he thought Zuckerman's original cost estimates were underestimated by as much as 30%. The same sentiment was expressed by several competitors who admittedly had cause to say so, but who nonetheless know the business of cost estimates and were familiar with Zuckerman's package.

³Forbes also pointed out that at the time that his evaluation was written, Zuckerman's package was still without a contractor's cost estimates. (This was because Zuckerman did not have a contractor on board by January 12). However, when additional materials were submitted in May, Barkan Construction Co. had joined the team. With the contractor came his estimates, which added \$3 million to the cost of the project. (The per room cost jumped from \$53,200 to \$63,000).

⁴The final flaw that Forbes mentioned was that Zuckerman was projecting that 20% of his income would come from food and beverage sales; that projection included revenue to be collected from a restaurant to be run by Anthony Athanas yet there was no commitment from Athanas to support Zuckerman's claim.

Forbes also said that Zuckerman had a strong commitment for permanent financing from John Hancock which had expired on February 28. Forbes explained that though he felt that such commitment could be extended, he thought that the decision to grant an extension would be contingent on the accuracy of cost estimates. In fact, no one at the BRA ever checked to see if that commitment had been extended. When the Finance Commission looked into the matter, we learned from Hancock's Senior Vice-President William Leary that:

1. John Hancock, by agreement dated January 11, 1978, offered a \$16 million loan commitment to Mortimer Zuckerman, c/o Boston Properties, which was accepted by Zuckerman on a conditional basis.
2. The condition upon which the acceptance was made was that Holiday Inns of America, a joint venturer, would accept the same commitment, under the same terms.
3. As of February 1, 1978, Holiday Inn had not accepted that commitment.
4. Because a developer had not been designated for the Long Wharf Hotel site, Hancock's offer was extended to July 31, 1978.
5. That offer no longer stands, and Zuckerman's acceptance is no longer valid since the commitment was not accepted by Holiday Inn within the agreed time period and since Zuckerman was not designated by July 31, 1978.
6. John Hancock might be willing to renegotiate the terms of the commitment but would probably insist that the interest rate be raised.
7. Hancock might choose to stay away from the project altogether in light of the controversy surrounding this project.¹

When Stewart Forbes left the BRA in the spring of 1977, Peter Menconeri (BRA Director for Economic Planning and Policy) continued the financial analysis of the eight submissions. According to Menconeri, Forbes' evaluation was just the beginning. "When I looked at Zuckerman's submission in more detail, I saw inconsistencies - numbers problems. Numbers used in one section did not relate to numbers in another section. Square footage compared to income did not jibe. There were

¹A copy of Zuckerman's first mortgage loan commitment from Hancock is included. See Appendix F.

basic arithmetic problems.² The Finance Commission does not contend that the board members were privy to Menconeri's analysis with respect to these inconsistencies, but the substance of Menconeri's message was expressed by the Director in a memorandum to the mayor which was read by at least four of the board members. (That memorandum will be discussed later in the report).

The Finance Commission also received Menconeri's testimony on the subject of real estate taxes that developers were offering to the city. According to Menconeri, proposed new guidelines for 121A projects show that the city should anticipate as much as \$1200 - \$1500 per room for the hotel;² Zuckerman

¹Menconeri first discovered the most serious of the inconsistencies when he compared projected income from commercial space to square footage of commercial space. Later, after asking questions about the discrepancy, he learned that 20,000 square feet of space (at \$7 per square foot - \$140,000) had been omitted, from the revenue projections. Menconeri said that at a presentation before the BRA staff, Edward Linde, Zuckerman's partner did indicate that there was an additional 20,000 square feet of retail space to consider which was "Always a part of our original intention but not shown directly in our submission."

In a memorandum to the Director, written ten days after Zuckerman's presentation, Berlandi pointed out that it was important to determine the type of hotel they were hoping to achieve, one that was primarily commercial. (It was known at that point that the staff was leaning toward a residential hotel.) In the same memorandum, Berlandi indicated to Walsh that as opposed to all of the other submissions, Zuckerman's package placed more emphasis on residential income. If Berlandi had considered the additional 20,000 square feet of space, however, made known to him and everyone else ten days earlier, he would have seen that Zuckerman's proposal was no more residential than any of the others.

²The old standard, which had been applied to the Sheraton Hotel, the only hotel in the city with Chapter 121A status, was \$500 per room.

offered considerably less in his original package.¹ Moreover, in his letter to Zuckerman, John Worthen (Vice President, City Mortgage and Real Estate Department, John Hancock Mutual Life Insurance Company) called on the developer to note that

... Condition 26 requires a 121A Tax Agreement to be obtained. Without limiting this Company's right of approval of said agreement, it is to be understood that the total Real Estate Taxes per annum on the entire security cannot exceed the product of \$1,000 times the number of keyed hotel rooms.

According to Menconeri, taxes on that site will "very definitely go above \$1,000 per room. \$800 - \$1000 figures are still not in line with that we are looking for."

As stated earlier, Menconeri developed a format to evaluate the proposals and ranked them on the basis of the following criteria: construction cost estimates, how firm the estimates appeared to be based on communications from contractors, the equity positions of the parties involved, and the strength of financing commitments. Even though he evaluated the Zuckerman scheme on the basis of all materials submitted, including those that came in after the January 12 deadline, which he said had improved the package substantially, he still ranked the package fifth.² Where Zuckerman's scheme might have fallen in Menconeri's ranking had he relied on only those materials submitted on time can only be a matter for conjecture.

¹Menconeri testified that when Linde came before the BRA staff to present his package, he was questioned about the taxes that Wharf Properties would be willing to pay. According to Menconeri's testimony, Linde said, "The numbers are reflective of our financial analysis.. We would be prepared to increase them."

²Menconeri did say that though the ranking he gave to Zuckerman was not based on the original submission, he did reduce the rating by an arbitrary percentage to compensate for, what he obviously felt was an unfair advantage caused by Zuckerman's submission of additional materials after the due date. "That's the only way I could deal with it because there wasn't any decision made...to my knowledge, it [whether or not to consider supplementary materials] was never officially resolved.

The order of his final ranking, based solely on the financial criteria listed above, was as follows:

- | | |
|---------------|---------------------|
| 1. Perini | 5. Wharf Properties |
| 2. Bay Colony | 6. Philopolous |
| 3. Marriot | 7. Pattison |
| 4. Dunfey | 8. Lidapell |

C) Zuckerman's Proposal Ranked Eighth in the Staff's Design Evaluation

A memo directed to Robert Walsh from John Sloan (Director of Urban Design) and John Dobie (Project Architect) dated February 13, 1978 contained a ranking of submissions based on design criteria that they had included in the developer's kit. Out of a possible 400 points, Zuckerman's project was rated the lowest with a score of 157. With respect to their evaluation, Sloan and Dobie said the following:

We feel that, from a design standpoint, only the first three are worthy of further consideration. None of these are perfect, and changes during the design review process would be necessary for any of these three.

Conversely, we feel that, even with intensive design review, it would be very difficult to achieve an outstanding building with any of the other five submittals.

Based solely on design criteria, the proposals were rated as follows:

Dunfey - Graham Gund	337
Marriot - Marriot Design Staff	279
Bay Colony - Huygens and Tappe'	263
Philopolous - Childs, Bertman, Tseckares & Casendino	209
Lidapell - Ganteaume and McMullen	200
Perini - Mintz	189
Pattison - Sasaki	177
Wharf Properties - Cossutta and Ponte	157

In his May 3 'memo to file' Sloan said that it was important to determine the type of building that would be suitable for the Waterfront and for the site in question. He said, "The question seems to be that of having a brilliant, one of a kind design for the site versus a reserved background building." Perhaps to resolve the issue Sloan went on to say that it was his feeling that "the site calls for a modest,

background building that would work well with the strong Wharf buildings that are already in place."¹

D) The Director Ranked Zuckerman Seventh in his Overall Evaluation

On June 28, 1978, Robert Walsh sent a memo to the mayor explaining that he had completed his full scale review of the eight proposals. Walsh said that his evaluation was based on the following criteria:

1) Design

- (a) How well it met the terms of the stipulation and agreement.
- (b) How well it conformed to the requirements set forth in the developer's kit.

2) Financial Feasibility

- (a) Were the cost estimates and revenue projections accurate?
- (b) How strong were the mortgage commitments?

3) Construction Commitments

- (a) Could the developer meet construction schedules?
- (b) How specific and accurate were the cost estimates?
- (c) Was there a strong relationship between the contractor and the developer? How committed did the contractor appear to be?
- (d) Did the contractor have a history of good performance?

4) Hotel Operator

- (a) Did the operator hold a "quality image"?²
- (b) Would the operator maintain a high standard of performance?

5) Programmatic

- (a) What was the market orientation of the hotel (ie. predominantly residential/tourist or predominantly convention/business)?

¹Though this memorandum would have been available to the Board members had they requested it, it was not distributed to them for their review. Sloan did, however, make his feelings quite clear about this matter when he and the mayor appeared before the board in July.

²At his hearing before the Finance Commission, Walsh said the following, "We were a little bit concerned about a Holiday Inn which does not have a national image as a deluze hotel chain - it certainly is a good chain - but not a deluxe hotel. We were looking for a deluxe hotel."

6) Tax Revenues

(a) What did the developer offer to pay in taxes under Chapter 121A?

7) Community Evaluation

(a) How did the Waterfront Neighborhood Association rank the submission?

In his memorandum, Walsh added the following:

... each of the eight submissions were evaluated and ranked according to a weighted point scale, which allowed for a possible score of one to ten, with a stronger submission receiving the higher score. Because of the varying degree of importance of the evaluation criteria, certain factors such as design, financial feasibility, construction commitment, and taxes were weighted more heavily than the other criteria.

Walsh ranked Boston Properties seventh in his overall evaluation and outlined its drawbacks as follows:

Although the architectural firm is extremely competent, the design scheme proposed for the hotel is completely out of character for the area and inconsistent with the design guidelines. The relationship with Waterfront Park and pedestrian easement is totally inappropriate.

Proposed uses for the hotel are inconsistent with the objectives since the developer is proposing a large scale retail/restaurant facility (to be privately operated) as part of the hotel complex.

The initial financial analysis prepared by the developer was inconsistent and lacked well-defined cost and revenue estimates.

The construction costs were provided by the firm after the initial proposal was submitted and are not well-defined.

Real estate taxes proposed for the hotel are second lowest at \$800/ room.

The community ranked the development proposal as last (eighth) of their choices.

E) The Boston Waterfront Neighborhood Association "Cannot Support or Accept Any Design Which Violates the Essential Components [of the Amendment to the Stipulation and Agreement.]"¹

This statement was made in a letter from Christopher Deering, President of the Association, to David Weiner dated May 12, 1978. The evaluation that came as part of the letter is attached. Also included in the letter was the statement that Zuckerman's proposal was considered to be in gross violation. See Appendices G-H.

F) Though There Was No Concensus as to Which Design Was Best, the Design Advisory Committee Liked Cossutta's Least.

This conclusion is supported by the substance of informal conversations between an investigator of the Finance Commission and a member of the Design Advisory Committee.

G) Peter Blake Thought the Cossutta Scheme Would Fit into the Site but Preferred the Gund Design.

In the height of controversy over the best design for the Long Wharf Hotel, the mayor called Peter Blake, Chairman of the Boston Architectural Center, to solicit his evaluation. According to the mayor, Blake and Jacqueline Robertson, "a reknowned New York architect," were to provide him with an independent report. In his statement to the BRA Board on July 27, the mayor explained that Blake and Robertson had made a careful review of each proposal. In fact, the two reviewed only four of the eight in depth.¹

In his letter to the mayor dated June 8, 1978, Blake said that he and Robertson both felt that only two proposals, the Cossutta and the Gund, would meet the standards that the mayor was trying to meet. Blake's own slight preference, he said, was for the Gund scheme but because he felt that either of the two "would work," he suggested that the decision be made on other than architectural grounds. (ie. economic strength of the developer, competence of the hotel manager, and so on.²

¹The mayor at the board meeting said that Walsh had refused to participate in that part of the process calling for Blake's review. Walsh, however, said that his refusal was based on his knowledge that Blake was set to review only four of the eight proposals. It was not until the mayor assured Walsh that he would ask Blake to review all eight of the submissions that Walsh allowed John Sloan to participate in that process.

²Blake said, "The chief problem with the Cossutta design has nothing to do with the architecture, it concerns the architect. He is a perfectionist and very intractable." This is an important consideration given that the scheme deviates so seriously from the terms of the Stipulation and Agreement and will have to undergo substantial revisions before the board members can accept it. (As mentioned earlier, the BRA Board members, by their own statement, cannot approve anything that does not conform to the Stipulation and Agreement.

Blake also said that the Cossutta scheme was expensive to build, a statement which certainly contradicts submitted construction cost estimates. According to Zuckerman's original figures, his hotel plan is less costly to construct than any of the others.

The Criteria That Was Used

The vote to tentatively designate Boston Properties developer of the Long Wharf hotel was taken on October 5 and was the result of a motion made by BRA Board member James Colbert. Of the four board members who were present at that meeting (Joseph Walsh was absent), only Farrell, Flaherty and Colbert voted for the designation; Cofield voted against it. The Finance Commission questioned the three members who voted in favor of the designation as to the criteria each considered in determining that the Zuckerman/Cossutta proposal should be designated.

Robert Farrell, Chairman of the Board, said that he considered the design of the proposals, the financial capability of the developer and the mayor's recommendation. Farrell stated that aside from his personal affinity for the Cossutta design, which he viewed with the rest of the proposals at the model shop, he relied on the evaluation which was presented to the Board by the Mayor's advisor, Peter Blake and BRA Director of Urban Design, John Sloan.¹ Although he recognized that Sloan did not feel that the Cossutta design was appropriate for the waterfront site, Farrell was impressed by Sloan's opinion that the Cossutta design was an outstanding piece of architecture. Farrell went on to say that he felt the Cossutta scheme was "entirely appropriate" for the site, and that Sloan's sense that it did not fit into the waterfront was strictly his own personal opinion which was not reinforced by any of the requirements in the developer's kit.² When further questioned on the criteria he used to evaluate the eight submissions, Farrell testified that he did not consider the evaluation by

¹ Farrell stated that he knew that Blake had reviewed only four or five of the proposals.

² Although Farrell said that he never reviewed the evaluation of the Design Advisory Committee, (DAC) he must have been aware that the Committee met since he had seen a memo from Bob Walsh to the Mayor which mentioned the Committee's evaluation. If Farrell had made an effort to see the minutes from the DAC meeting, he would have understood that Sloan's opinion, that the Cossutta design was inappropriate for the site, was upheld and reinforced by the three prominent architects who serve on the Committee. DAC member Tad Stahl went so far as to say that, "It (the Zuckerman Proposal) is a wholly inappropriate form for this neighborhood."

the Design Advisory Committee nor had he considered the evaluation which was done by the Waterfront Residents Association. He did state, however, that he was aware that the Association ranked the Cossutta design 7th in its evaluation.

Farrell explained that in addition to design of the eight proposals he also reviewed financial aspects respecting the development. Initially, Farrell mentioned only the feasibility of locating any hotel on the waterfront, but when pressed further he added that he also considered the financial competence of the developer. Farrell said that he thought Zuckerman had submitted a very strong financial package and that he thought the staff rated his ability to finance the project either first or second relative to the other proposals.¹ Farrell also stated that he was unaware that Zuckerman's financial commitment from John Hancock had expired by the time the Board voted its tentative designation, but that if he had known, he would have made an effort to ascertain whether the commitment could be extended. He added that he was not overly concerned that the financing had expired since Zuckerman would be required to prove a commitment for permanent financing prior to permanent designation by the Board.

In addition to the above-mentioned financial considerations, Farrell said the following about the tax revenues offered by the eight different developers:

- Q What about the proposed taxes to the city, for example, or economic benefits that the city might gain? In your opinion, was that part of the criteria? That is comparative financial benefit to the city.
- A Of this particular...?
- Q Of all the eight proposals.
- A Well, it was my understanding that all of the developers would apply for a 121A, that they would not do it without a 121A agreement. The 121A agreements at that time were being negotiated by a special 121A tax committee, [of] which Mr. Walsh was a member and in terms of return to the city, the formula would be identical for - the same for any developer.

¹This, in fact, was not the case. The financial evaluation by the BRA staff rated the Zuckerman proposal fifth.

Mr. Farrell's response implies that since the formula for determining the 121A payments would be the same for each developer, the financial benefit to the city in terms of tax revenue would be identical for all eight proposals. Farrell's implication is unfounded because although the figures projected are merely preliminary estimates, they do indicate what the developer feels he can afford. Any pressure on a developer to substantially increase his tax payments would have to threaten the financial stability of his package.

In addition to the aforementioned criteria that Farrell considered in making the waterfront hotel designation, he did consider the mayor's recommendation. He stated as follows:

"... had the mayor or anyone else made a recommendation, (and) it was obviously impractical, I would not have gone along with the mayor's recommendation. ...the mayor's recommendation, as I have stated before, he is the man (who) has been vitally interested in the waterfront from the beginning, extremely interested in the waterfront. The mayor did to no small degree participate in the Quincy Market project. He has been interested in the entire waterfront. He is the mayor of the City of Boston. He is the one who, who receives the blame or the credit ultimately for the success or failure of the waterfront project, and I obviously think that when the mayor is willing to make a recommendation on that particular project, the Authority has to give it consideration. I gave it consideration."

Board member James Flaherty testified before the Finance Commission under oath that he had reviewed the design and financial feasibility of the project and the recommendations of the BRA staff, Peter Blake, and the mayor when he made his decision to vote for the designation of Zuckerman as developer of the Long Wharf Hotel.

When questioned about the design aspects of the hotel proposals, Flaherty said that he relied on his own impressions from viewing the models at the model shop and considered what Sloan had to say when he appeared before the Board. Flaherty recalled Sloan's opinion (that the Cossutta design was "too bold" for the site) but did not explain how that recommendation influenced his decision. Instead, he said that he personally agreed with Blake, that the Cossutta scheme would be appropriate for the site. Flaherty was not aware that Blake had reviewed only four or five of the submissions. He was also not aware that the Design Advisory Committee had met to review the proposals.

In his testimony respecting financial feasibility, Flaherty stated that Zuckerman had a strong financial commitment from the John Hancock Insurance Company but he also said that he had never seen any documents concerning that commitment, nor had he read any evaluations of the financial strength of the developers prepared by the BRA staff. When asked to elaborate on his impression that Zuckerman had a strong financial package, Flaherty testified that he based his opinion on his knowledge of Zuckerman's past experience. The following is an excerpt from that testimony.

Q You mentioned Mr. Zuckerman's past performance. Could you tell me what you mean by that?

A He's been noted to be a real estate developer throughout the city and throughout the country.

Q What has he built in the city?

A He hasn't built much in the city.

Q He has?

A He hasn't.

Q He hasn't. Has he built anything in the city?

- A He's a real estate developer in the city, yes.
- Q Do you know which developments?
- A No, I don't, just what's heresay, that's all.
- Q How many do you think he's built in the city?
- A I don't know if he's built any in the city, to tell you the truth.
- Q Where has he built?
- A Outside the city.
- Q Where?
- A I don't know. This is again heresay. I was just inquiring to Mr. Zuckerman's ability to develop and build and I understand that he's developed some stuff outside the city and outside the state.
- Q How many hotels has he built?
- A I don't know?
- Q Has he built any?
- A I don't know.
- Q So as far as experience goes, you're not really sure how much experience he has?
- A Yes, that's probably correct, yes.
- * * * *
- Q What makes him financially strong?
- A He's got -
- Q Were his cost estimates good, did you think?
- A I didn't see his cost estimates.
- Q Well what did you base your decision on?
- A Again, I based my decision on my own personal observation of the models, the recommendation of the chief executive of the City of Boston, the Sloan recommendation and the Blake recommendation.
- Q No, we're talking now about the financial feasibility only.
- A That, no other than that I knew he had a commitment from the John Hancock, no other -
- * * * *

In response to further questioning about other financial aspects of the project, Flaherty stated that the projected tax revenue, which appeared in each of the submissions, did not enter into his decision. He also said that he did not know if the Zuckerman proposal, when compared to the other proposals, would be more or less beneficial to the city in terms of tax revenue. Although he was aware of the fact that each developer would be seeking a 121A agreement, he did not know that Zuckerman's financial commitment from John Hancock restricted tax payments per room at or below \$1,000 per year.

Judging from the aforementioned, it is reasonable to assume that Flaherty had little or no knowledge of the financial aspects of the designated proposal and therefore based most of his decision on design considerations. The Finance Commission attempted to determine whether community input affected Flaherty's decision since he testified that prior to his appointment to the BRA Board, his experience with urban redevelopment resulted from his having been president of the South Boston Citizens Association. In that capacity, he said he was concerned with the "needs of the communities and the ways the urban renewal process was affecting the communities..." The following reflects Flaherty's knowledge of community input and concern respecting the Long Wharf Hotel.

Q Are you aware of community evaluation made of the eight different proposals?

A I had heard some talk that there was an evaluation by the community, yes.

Q Was that of concern to you? In terms of your designating one of the developer?

A I took that into consideration, yes.

Q Do you know how the eight different proposals ranked?

A No, I don't.

Q Well then how could you take that into consideration?

A Of the community's concern.

Q Well if the community had expressed a concern by ranking -

A I hadn't seen that - I knew it was community input and I was concerned with the input of the community.

- Q You're concerned with their input but you had no idea of what they were looking for?
- A I didn't see the recommendations, no. I was concerned with the input as well as I was concerned with the North End community and the Waterfront Park, the elderly housing, the Mercantile Wharf building.
- Q Well you weren't concerned that they had their input, that they had their say?
- A Yes, sure.
- Q But you didn't care what they said?
- A I never got any communications from anybody in the neighborhood indicating they were pleased or displeased with the process.
- Q Did you ask the director or the chairman for any information?
- A No, I didn't.
- Q Is it fair to say that you were concerned that you wanted them to have community input but you were not so concerned that you cared what they said about it?
- A I had no communication from the community one way or the other.
- Q And you never asked any questions to find out what they thought?
- A I knew the North End community if they were displeased they certainly would make it known to you as they have in the past.
- Q I'm talking about the Waterfront community as well as the North End community.
- A Well when I say the North End I mean - I just presume it's the Waterfront and the North End. No I never had any communication with either the North End or the Waterfront community.
- Q Are you familiar with any meetings that took place between the Waterfront Residents Association and the architect for the Zuckerman proposal, Cossutta?
- A I understand that there was a meeting where I read in the papers, that there was a meeting held amongst those persons.
- Q Where was the meeting held?
- A I presume it was held in the community.
- Flaherty was also asked what he knew about the Stipulation and Agreement and how it affected his decision. Initially, Flaherty stated that he thought the Cossutta design conformed with the terms of the Stipulation and Agreement. He later changed that testimony and stated that he understood that all of the proposals did not conform with the Stipulation and Agreement and that the Zuckerman proposal needed some minor

adjustments as did all of the submissions. When asked in what way the Cossutta scheme did not conform, Flaherty stated, "I believe through - the walkway has to be opened up a little more and there [is] some other architectural stuff that I don't remember... Some other design stuff that had to be changed or - to meet the specifications for the requirements of the community." When asked if he knew of any other inconsistencies between the Cossutta design and the Stipulation and Agreement, Flaherty said he knew of no others.

James Colbert, who has served on the BRA Board for over twenty years, testified before the Finance Commission, and said "The bulk of the criteria I used was that when I looked at the models, I thought that Zuckerman was either the best or the second best; certainly one of the best." When questioned whether recommendations from others affected his decision, Colbert replied that he did give "substantial" weight to the mayor's recommendation and added that he did not give much weight to Sloan's recommendation in favor of the Dunfey proposal because he was "uneasy" about that recommendation.¹ Colbert said, "Mr. Sloan had been appointed when Mr. Kenney was Director...[and] Mr. Kenney was working as a consultant for the Dunfey people..." Colbert went so far as to say, "...if I felt that the Dunfey proposal was the best, I would have had some problems voting for it."

In addition to the aforementioned considerations, Colbert stated that he read over the financial aspects of the different proposals. Based on that information, he stated that he made a determination that Mr. Zuckerman was financially capable of building the hotel. Furthermore, Colbert testified, "My recollection is that the city would benefit more from the Zuckerman proposal than it would from some of the smaller ones."² The following is an excerpt from that testimony:

¹With regard to John Sloan's recommendation, Colbert testified, "I don't have too high a regard for John Sloan. If you look at this month's issue (October, 1978) of Boston Magazine, you'll see a picture of John Sloan and his roommate in a Beacon Hill apartment decorated with a billboard from the Old Howard; that's not my idea of a design expert. I wouldn't want that in my kitchen and neither would my wife."

²In relation to the other seven submissions, Zuckerman's hotel was the second cheapest to build and contained only 383 rooms while all of the others contained 395. Zuckerman's original submission of January 12, proposed the second lowest tax payments per room (\$800) of all the proposals.

Q Did you take into consideration the economic benefit that the city would gain from having Zuckerman over another developer?

A Yes.

Q And how did that influence your decision?

A My recollection is that the city would benefit more from the Zuckerman proposal than it would from some of the smaller ones.

Q What led you to that decision?

Q Be specific.

A What's that?

Q What led you to that conclusion?

A Well, I studied them, but you people are acting as if I did this this morning. I did this some months ago and I don't remember every detail. And the implication by you and Mr. Lambert that I'm being dishonest because I don't remember every detail, I resent.

Q I'm not suggesting that you should remember every detail. Did you read the proposals - the notebooks that were submitted?

A Yes I did, yes.

Q And from the material that was in the notebooks - to the best of your recollection - is the material in the notebooks what led you to believe that Zuckerman would offer more to the city in terms of economic benefits?

A What do you mean, the material in the notebooks?

Q I mean that -

A Every document and report on this that was given to me, I read.

Q I understand that. That's not what I'm talking about. I'm talking about the package of materials that was submitted by each developer as his submission. Did you read the developer's submissions?

A Yes.

Q Did you read Zuckerman's submission?

A Yes.

Q Do you recall reading the financial aspects of the Zuckerman submission?

A In a general way.

Q Okay, let me bring your attention to some of the financial aspects of the Zuckerman proposal, one of which is that the \$16 million mortgage, first mortgage commitment from John Hancock expired on February 28th. Did you know if that was ever renewed?

A No, but that sort of thing usually can be renewed.

Q Okay, do you know that in -

A A company like the John Hancock gives a financial commitment for a certain period and then at the end of the designated period it expires and you can assume they'll give it again, if it's needed.

Q Was it your general impression that Zuckerman was offering more per room in taxes than other developers?

A More per room -

Q In taxes, property taxes.

Q To be paid to the city.

A I'm not sure, no, I don't remember precisely.

Q Why did you think that Zuckerman would be more beneficial to the city economically?

A My recollection is - this hotel is larger than some of the others.

Q In rooms?

A What?

Q In room number?

A No in the hotel size.

Q So why necessarily would that be better than the others, size - why would -?

A Well I think his hotel, I think the value of his hotel would be greater than the smaller hotels.

Q When you say the value of his hotel, do you mean the amount that it costs to build it?

A Yes.

Q Is larger than the other hotels?

A Than some of them, yes.

Q Would that make it more beneficial to the city?

A Well that's your question, you asked which would be more beneficial to the city, didn't you?

Q Yes.

A Well it would seem to me that his would be beneficial to the city.

Q Excuse me. You said that his would be more beneficial to the city than most of the others or all of the others?

A Yes.

Q You said that his was a larger or more costly to build - hotel than the others?

A I believe, than some of the others I said.

Q Okay, is that why his is more beneficial to the city because it's more costly to build?

A Well I think that, my recollection is that it would cost more to build than some of the others and it would be worth more when completed.

Q Worth more? How do you judge the value of a hotel?

A Well I suppose the number of rooms and that sort of thing.

Q Did his hotel have more rooms than all of the other submissions?

A Than some of them. I don't know about all of them.

Q Is that how you would judge the value of the hotel - by the number of rooms?

A I would think that would one of the criteria.

Q Because it would bring in more income?

A Yes.

Q Is that how, that's how you judge the value of it? Would a hotel -

A Look, there would be a number of ways I would judge the value of it. That's not the only way.

Q What are the other ways?

A I don't recall at the moment. I went over this thing and I studied it in a general way. I'm not in a position to give you every detail that went through my mind when I was studying it. I reached a conclusion that the Zuckerman proposal was the best proposal and overall was best for the city.

Mr. Colbert was also asked if the projected tax revenues from each proposal had any impact on his decision. He responded to this question indirectly by stating that he understood that all of the developers would be asking for a 121A tax agreement but that that fact did not affect his decision in any way. When asked if he was aware that Zuckerman's financial commitment from John Hancock limited tax payments per room to \$1,000 or less per year, Colbert stated that he probably was, but could not recall if he had read that. He further stated that he did not recall if that fact had any impact on his decision.

Colbert testified that he had a concern for the feeling . . . the people in the North End because of statements that were made by Councilors Langone and Sansone. He stated that he personally went down to the North End and that contrary to what the city councilors were saying, the people he spoke with had no objection to building a hotel on the waterfront. When asked, Colbert also said that he was "vaguely" aware of the Waterfront Association and although he thought he was aware that they had ranked the eight hotel proposals, he did not recall what that ranking was. Asked if that ranking was a concern of his, Colbert responded, "Not really. I don't think they were any more competent to rate them than I was. I don't think Mr. Sloan is any more competent to judge them than I was." Mr. Colbert concluded his testimony by stating:

I made the motion...that the Boston Properties be designated as tentative developer of the Long Wharf Hotel Site because in my judgment, it was the best design - that Mr. Zuckerman is capable of building the hotel...I voted for Mr. Zuckerman's proposal solely on my own judgment. I was not pressured. It was not because I was a holdover, I would have done the same thing if I had a ten-year appointment or was beginning another appointment.

Findings:

1. The BRA board ignored the spirit and the letter of the requirements of their own developer's kit and the intent of the Stipulation and Agreement in designating Zuckerman.
2. The BRA board disregarded every single evaluation done by anyone whose job it was to make an evaluation.
3. The only evaluation that the board considered was based solely on architectural merit and was done by Peter Blake, who had no place in the BRA's formal review procedure.
4. The board members knew surprisingly little about the developer and the development when they designated Zuckerman to build the hotel on Long Wharf.
5. The BRA board's vote of 'no confidence' in its own staff is clear and will have a detrimental effect on development in the city.

The Mayor's Intervention

On July 24, 1978, the Finance Commission served a subpoena on the Keeper of Records in the Mayor's Office which required that the following records be made available:

all books, letters, memoranda, documents and other papers in your possession, custody or control since January 1, 1973, relating to the above described investigation, including: (a) All written communications between Mayor Kevin H. White or members of his office and staff employees and board members of the Boston Redevelopment Authority; (b) All written materials received by Mayor Kevin H. White or members of his office from the Boston Redevelopment Authority respecting the development of Parcels A6 and A7; (c) All written communications between Mayor Kevin H. White or members of his staff and Peter Blake, members of the Design Advisory Committee, or any other person who provided professional consultation or advice with regard to development proposals for Parcels A6 and A7.

Two weeks later, by letter dated August 7, 1978, the Commission learned that the subpoena had been referred to Corporation Counsel Herbert P. Gleason. Gleason told Finance Commission Chairman Jeffrey Lambert that he was asked to step in because "there is no keeper in the Mayor's Office, nor does that office maintain any systematic procedure for their retention." Nevertheless, Gleason managed to come up with three documents including:

- a) the memo dated June 28, written to the mayor from Robert Walsh, evaluating the eight proposals,
- b) a newspaper column written by former governor Francis Sargent entitled "White's Right: Be Strong", and
- c) a copy of the statement read by the mayor before the BRA board on July 27, 1978, indicating his preference for Zuckerman's package.

Items received by the mayor but which, for whatever reason, were not among the documents submitted under the subpoena, included:

- a) several letters from Peter Blake to the mayor,
- b) at least one letter from the mayor to Blake,
- c) Blake's letter to the editor of the Boston Globe, a copy of which was sent to the mayor,

- d) several letters to the mayor, criticizing his intervention in the selection process. Among those were letters from The Boston Society of Architects, the Boston Waterfront Neighborhood Association, and the Greater Boston Chamber of Commerce.

As a matter of record, the mayor first became involved with the selection of a developer for Long Wharf on March 22, 1978 when he visited the BRA site office to view the models with Micho Spring, Special Assistant to the Mayor, Robert Walsh and John Sloan. Sometime earlier, but still in March, Walsh and BRA Board Chairman, Robert Farrell both met with the mayor at the Parkman House to bring him up to date on BRA matters in general and to inform him of results of those evaluations that had been done for the Long Wharf competition.

In his statement before the BRA Board on July 27th, the mayor said of that meeting:

Subsequently, without solicitation by me, I was informed that the design and review selection process had been already completed by the BRA. My understanding was that 400 points was the maximum any design could attain, and that the criteria had to do solely with architectural merit. Graham Gund's design had scored the highest, Marriott's was third, and Aldo Cossutta's had finished last. I made little comment but was very surprised that the only nationally known architect among the submissions had fared so poorly.

Neither Walsh nor Farrell recalled having indicated that the review process had been completed or that the criteria had to do solely with architectural merit. To the contrary, Walsh told the Finance Commission that "we [he and Farrell] did have a discussion on how the architectural review was coming and I informed him of what the results of the architectural review were at the time." Farrell testified as follows:

The mayor simply liked to be kept advised of what we were doing and at some point, and I would say maybe this might have been March, we - Mr. Walsh and I met with the mayor and at that time Mr. Walsh and I gave the mayor some broad outline of what John Sloan's evaluations were of the proposal. Something of that sort.

Q Where did you meet with the mayor?

A It may have been at the Parkman House.

Q Just the three of you?

A Just the three of us. And that was simply a question - that was no more than simply this - just a briefing as to what the Authority was doing, this was brought up.

Q From the comments the mayor made when he was invited to the board, which we will get into later, I was under the impression that the mayor thought John Sloan's review was the final review and that basically the Authority had come to its final ranking, so to speak, based on a 400-point scale. Did you in any way indicate, or did Mr. Walsh indicate to the mayor that John Sloan's review was the final review?

A No, I don't think so.

Q Did you make it clear that it was an interim briefing as to the progress?

A I couldn't answer that. You know, it was - this particular project was one of a number of matters discussed. We just told the mayor where we were on this and where we were in Charlestown and where we were on other things. And I think we filled the mayor in as to what John Sloan's evaluations were.

Sometime during that meeting at the Parkman Center, the mayor expressed an interest in viewing the models for himself. This led Walsh to arrange the viewing at the BRA site office on March 22.

Conflicting testimony received by the Finance Commission makes it difficult to determine whether or not the mayor's visit on March 22 was his first visit to the site office. Testimony indicates that he was there on an earlier occasion but this conflicts with other statements that were made under oath. It's therefore unclear when the following transpired, but at one point, the mayor was overheard saying, "Zuckerman will have to make some changes if I pick him." The mayor's obvious preference for Zuckerman's package was reiterated when, with reference to Cossutta's design, he asked John Sloan, "Are you sure this is a bomb?"

While at the site office, according to Walsh, "The mayor expressed concern about whether he was getting the best product or whether he was looking at a bunch of mediocre proposals." In his statement of July 27th before the BRA Board, the mayor said,

I had been prepared to agree with the design review committee, when I walked in -- and would not have interfered. But I was convinced, after reviewing the models, that the Cossutta design did not belong in last place.

I decided at that point to broaden the process legitimately. I asked Peter Blake, Chairman of the Boston Architectural Center, and Jacqueline Robertson, a renowned New York architect, neither of whom I had known before, to review all the submissions and give me an independent report.

Once Blake agreed to provide professional consultation¹, the mayor wrote as follows:

Dear Peter,

I am most happy you will help to educate me for that is precisely the assignment. The normal selection process will not be interfered with, but because I have no confidence in my opinions in these areas professionally and yet do care greatly about trying to get the best from our submission -- proceed.

Robert Walsh testified about the sequence of events subsequent to the review session at the BRA site office. His testimony was recorded as follows:

¹Blake confirmed his intention to participate in the review process in a letter to the mayor dated April 11, 1978, but said:

I have two questions: first, what would be my position vis-a-vis the BRA? Obviously, they are a bit nervous at the prospect of an outside design review. I would like to get their views, but I want to have it made clear that I will be working for you, and reporting to you. And, second, what would be my position vis-a-vis the BRA's own design advisory team -- Ben Thompson, Tad Stahl, Earl Flansburgh? They might be a bit miffed by my presence. (All three are friends of mine, by the way.)

If you think that these doubts can be resolved, I'd be pleased to go ahead.

What resulted from that was a breakfast meeting which was attended by myself, Peter Blake, Richard Weinstein from New York, and the mayor, where the mayor expressed what I just said, about the fact that he didn't know if he had mediocre proposals or whether he had, as he put it: "Do I have two A's and three C's" or something like that ...

The next sequence of events in that direction was that the mayor set up a review and began to call in the architects - not the whole team - just the architects - so that the architects could present to him as well as to Peter Blake what their proposal was. I objected to that process. My objection was not that the mayor could not have the opportunity to do whatever he wanted to do in terms of reviewing proposals, but I thought that if he was going to do it, he should review all of them and not just four of them.

Q Did he tell you that he was just going to review four of them?

A At one point, in a discussion we had, he had said he was only going to review four of them. I told him I thought that was not a proper thing to do. I shouldn't use the word 'proper'. I didn't think that it was in his best interest to do that. I thought he should review all eight of them. I also thought that I should not be a part of the process because what he was doing was beyond the traditional decision-making process for development matters affecting the BRA and the city. He was very insistent about what he was going to do. He did tell me that he would review all eight of them and on that basis, I agreed to allow John Sloan to participate in the meetings.

Weinstein did not participate in the meetings. Peter Blake participated in the meetings and someone else [Jacquelin Robertson] participated in the meetings. As I understand it, they only reviewed four proposals ... I think you're aware of the results of that process, in terms of what Peter Blake's report was.

* * * *

I don't recall any further discussion with the mayor about the proposals until I had my meeting with him when he indicated to me that the Cossutta proposal was going to be designated.

Q What meeting was this - who attended it - where was it, please?

A Let me just make sure I'm correct on that as far as any further discussions with him. Yes, that's true. There was a meeting - I was invited to breakfast with the mayor at the Parkman Center, and the mayor and I were alone. Nobody else was there. The mayor indicated that he wanted to proceed on the hotel site and that he wanted the Cossutta proposal designated. I indicated that I had some real problems with that designation, in terms of how it ranked, or came out of the whole process.

He appreciated my problems but indicated that he still wanted the designation made. He indicated very clearly to me, and I want to add this, that in no way was he doing this for Mort Zuckerman. He said that in his judgement, it was the best design and he wanted it. I told him I couldn't recommend that proposal and he said to me, 'If you can't recommend it then you can resign.' Our conversation ended very quickly after that and I had no further conversation with him until the following week.

In that week period it became public that the mayor and I were not getting along, and I was called to another meeting at the Parkman Center where, in attendance with the mayor, the Chairman Bob Farrell, two other members: Joe Walsh and James Flaherty, and there was some confusion about why the meeting was called for. There was some confusion about why I was there. In any event, the mayor indicated to the Authority members that I had decided to resign over a difference of opinion and that - the discussion really went on to when I was going to resign and didn't really come to any conclusion.

Q This is the second meeting at the Parkman Center?

A Yes.

Q When you met there, and that was with Farrell, Walsh and Flaherty?

A Flaherty yes. No, no, I'm sorry, I stand corrected. Farrell, Colbert and Flaherty.

Q Farrell, Colbert and Flaherty?

A Yes.

Q At that meeting, did the mayor state why you were resigning - in other words, there was a disagreement over the designation.

A A disagreement over the best proposal for the hotel.

Q And did he tell them what his proposal was?

A Yes. He indicated what his proposal was.

Q Was there any discussion of that proposal or of the process being used?

A Nothing of any major consequence, no. There was more around - I was really the focus of the conversation, more than anything else.

Q Had you told the board members, or any of the board members prior to your meeting with three of them and with the mayor at the Parkman Center what the mayor's intentions were with respect to this project, in other words, whether or not he had a favored design?

A Yes, I did.

- Q Could you tell us how that happened, when you did it, who you spoke to.
- A When I had my meeting with the mayor, when in effect he told me what my options were, I had a telephone conversation with the Chairman, and subsequently went out to lunch with him to talk about what was going to happen. I also had a telephone conversation with Jim Flaherty over the situation. I did not talk to Jim Colbert nor to Joe Walsh.
- Q How about Mr. Cofield?
- A I informed Mr. Cofield about what was happening, I think it was later on in the week.
- Q By telephone?
- A By telephone.
- Q Did you receive from Mr. Farrell or Mr. Flaherty any indication of what their view was regarding the mayor's choice of a developer?
- A Not precisely. I think that -
- Q Did they express any support for your position or give you any advice as to what you should do? I mean, you're a long term employee of the BRA and presumably your future was at stake.
- A I frankly am somewhat - on this particular matter my answer would be somewhat colored because of my emotional feelings towards some of the members because of subsequent acts but - no, I don't think there was any concrete advice given to me. I explained what I thought was in the best interest of the Authority. They obviously had their own position on the matter which still has not been made public - so there was no advice - and obviously there was no support.
- Q Up until that time, had your communication with the board members been fairly open?
- A Yes.
- Q Had they been supportive of most of your decisions?
- A Most of them, yes.
- Q You would say that you got along relatively well with them?
- A On the whole - I wouldn't say it was a smooth relationship, but on the whole it was probably as it should be.

Q Your first meeting with the mayor - was that at city hall when you had breakfast - you said - so you met with the mayor and Peter Blake and Richard Weinstein?

A Yes, that was at city hall.

Q At city hall. And he said that he was calling for this review by these advisors I'll call them architectural experts.

A Yes.

Q Did you at that time bring to his attention the other aspect of the competition, in other words the non-design aspects of the competition?

A Yes.

Q And can you tell us what exchange there was on that?

A His focus was primarily on design. He wasn't focusing on the operator, nor was he focusing on the financial package, the program of hotel, the community position, or construction status of the contractor, construction relationship with the developer. He wasn't focusing on that at all, he was simply focusing on design.

Q Did he tell you at that time or give you to understand at that time that these other matters would not be considered by him or just that he was going to focus on one thing?

A He was just really focusing on design. There was no explicit comments, about I don't care about financing or things like that or just simply design.

Q After those first meetings you had with the mayor, I mean the ones that you've been telling us about, at City Hall, you then had a private breakfast meeting with him at the Parkman Center?

A Yes.

Q That's when he said he wanted the Cossutta design?

A Yes.

Q Did you bring up again at that time or was there any discussion between you about the other non-design aspects of the competition?

A Yes.

Q Can you again give me the substance of what was said?

A I mentioned that I thought that in addition to the design problems on that particular proposal, I thought that it was deficient insofar as the relationship with the contractor, I thought that based upon staff analysis that it was probably infeasible. I said that -

Q You mean financially infeasible?

A Yes. The cost of construction - his estimates when you relate that to the design. I thought that in my judgment and I am supported by the staff that we were a little bit concerned about a Holiday Inn which does not have a national image as a deluxe hotel chain - it certainly is a good chain - but not a deluxe hotel. We were looking for a deluxe hotel or a premium hotel on the site but again, his focus was on design. I would say he was mildly interested in my comments but more interested in the design.

The meeting that was attended by the mayor, Robert Walsh and three of the board members at the Parkman Center took place on July 5, 1978. As a matter of record, the mayor's next involvement came on or before July 20th, the day that Walsh was fired as Director of the Authority. Cofield explained the events surrounding Walsh's termination as follows:¹

¹Testimony received from attending board members about the Parkman Center meeting and the events leading up to Walsh's termination is included in Appendices J - M.

Excerpt from the Testimony of James Cofield

Q Did you have any - did you know at all before the meeting that Mr. Colbert was going to make a motion to terminate Mr. Walsh earlier than?

A Yes.

Q You knew beforehand?

A Yes.

Q How did you know?

A Well, the couple days immediately preceding - or the week immediately preceding that meeting, things were really hot by that time. There was lots of pressure. I was full aware of it and Bob Walsh had called me to discuss the pressure and that the mayor had specifically told them that he had to go, and that Bob Farrell had many discussions with the mayor and - again, the week prior to that meeting things were real hot and heavy. On the morning - Bob Walsh also discussed with me how he should do it, how he should resign, what period of time, how he should do it, whether he should resign immediately or resign effective at some later date or - those kinds of conversations we'd had in the week - the days of the week prior to that Thursday meeting.

On the morning of the board meeting, Bob Walsh called me and said that he had made an offer concerning his resignation. I don't know who made the first offer but it was his position that he would resign, that he had to - I guess the mayor made the first offer - that he would accept some other title other than director and the resignation would become effective - I don't know - two to three months down the road. Bob Walsh's position was that he would not relinquish his title or authority as director, but that also he didn't want to have to leave immediately, he wanted some grace period - but that he would not - we discussed that and it was my view that it was not to his benefit and certainly not the thing to do to relinquish his either title or authority as the director and not be able to make the recommendations and reach the decisions that - I didn't see where he would gain anything out of that. On the morning of the Board meeting - it seems as though in our conversation he called me and our conversation - the mayor was really angry - is the kind word - angry at the fact that Bob Walsh would not accept his offer, the mayor's offer, which was to accept some lesser role in the BRA in title or authority and be given a grace period. He was angry at the fact that Bob Walsh would not relinquish the title and or authority and wanted to keep the title and authority. Bob Walsh told me that the mayor was going to fire him immediately. He told me that in the conversation in the morning.

When I went to the board meeting, the Board generally gets - sits down in one of the Board rooms - private meeting rooms or private offices behind the actual boardroom for a couple of minutes before every board meeting, and at that meeting I remember getting there a little on the late side and the other authority members were there and had been talking. Bob Walsh was not in that meeting and not in the room and he generally is always there. I went in - they were obviously having some discussion or had been talking about it for some time. Bob Farrell asked me step into the next room, which was also again one of the offices that the Board uses and told me that the mayor wanted him out immediately. No-no-no - As I was going - let me back up -

As I was going around behind the board - I arrived at City Hall and went up to the ninth floor - These offices are physically behind the board meeting room. As I was going around and down the hall to go into one of these offices, Bob Walsh met me and said, 'They're going to do it today. They're going to fire me today. Colbert's

going to move to fire me today.' And he was upset - I could tell he was really upset. And I went on in the office and shortly after I was in there, Bob Farrell said, 'Why don't we go into the next office. I got something to tell you.' So we went in and sat down and Bob Farrell seemed somewhat disturbed - really disturbed and he said that the mayor wanted him out immediately, and he had had lots of conversations with the mayor about it, he had just had a conversation, I don't know, some minutes or - not some minutes - earlier that morning - an hour or so earlier - and the mayor was adamant that he wanted Bob Walsh out immediately and that Colbert was going to move to terminate him. He said that they tried to work something out. Bob Farrell was saying that he thought that both people's egos were involved at that point - that Bob Walsh's ego was involved, and the mayor's ego was involved, and Bob Walsh wanted to hang on to the title and that that ticked the mayor off and therefore the mayor wanted him out and was really pissed over it, and wanted him out immediately. He said something to the effect that he has agonized over this thing over the week preceding that more than anything else in the last I don't know how many years - that it was a really problem thing for him - that he was up over the weekend at his place in New Hampshire or wherever and he spent an afternoon out in a boat in the water thinking about it etc. etc.

Q But when you say ' he spent ' who are you talking about?

A Bob Farrell. Had spent time out on the water in his rowboat or what have you agonizing over this whole thing. And that he had conversations with the mayor trying to convince the mayor not to do this, that he thought the mayor was wrong, but the mayor was absolutely adamant that he wanted him out and he had to go immediately on that day and that he thought that both people's ego was involved - that he, Bob Farrell was trying to work something out for Bob Walsh to give him a longer period, a grace period, etc. etc. but the mayor was adamant that he wanted him out - that he had to go. So, you know, I didn't say anything - much - I just sort of listened.

Q Did he say at any time that the mayor had threatened him?

A Now that you say that, I think there was a suggestion of that. I'm sure now there was a suggestion of that - I don't remember exactly how it came up but I remember Bob Farrell saying that he had thought about this whole thing in terms of him on the board but it would not do him any good to resign because it wouldn't solve anything and that he thought he could do best by staying there. Something like that so there clearly was a suggestion about either he had to do it or leave because he said he had thought a lot about it and that it wouldn't do any good for him to resign, because he thought he could do best by staying there or whatever.

Q Did he indicate that the other board members had agonized over this to the extent that he had agonized over it?

A No, he did not.

Q You say that the Board members meet before the public meeting - How long do they normally meet?

A I would say from one to five minutes generally - maybe ten.

Q What transpires in the one to ten minute meeting?

A During that little private meeting we essentially discuss items on the agenda and see if anybody has any problems with anything on the agenda.

Q How long did this meeting last this day?

A Well I got there late. They had already discussed everything that they needed to discuss. Again I went in this meeting - shortly after I was there - again I knew what was going to happen at that meeting because I talked to Bob Farrell - Bob Walsh earlier in the morning. I went in and I must have been in there very shortly and Bob Farrell said "Come on James, why don't I - let's go in the next room, I want to talk to you. And that's when he said all this stuff. He then said to me something to the effect - if you'll leave me for a couple of minutes, I want to try to reach the mayor again. So I went back into the other room and he called the mayor - whether he reached him or not I don't know.

Q What went on in the other room when you returned?

A Let me back up a minute. He also mentioned something to the effect that he had been trying to reach the mayor that morning and he mentioned the mayor's assistant Micho Spring, whatever her name is, something to the effect that either she called him back or - her name came up in the conversation somehow. I don't remember now exactly what - but that the mayor wouldn't talk to him that day or that morning but he had been trying to reach the mayor a number of times and the mayor just wouldn't return the calls and Micho Spring called him and he said something. When I went back in the other room you know he either talked to or tried to talk to the mayor again and there was just sort of a solemn little time in there cause I mean everyone knew what was going to happen and again Bob Farrell told me that something to the effect that Jim Colbert is going to move to terminate him and Jim Colbert is going to move to do something, to terminate him immediately after - I don't remember specifically so they went back in there I would say sort of assume that Bob Farrell came back in which maybe it was two minutes.

Q So in the time that I don't want to harp on this but in the time that Farrell was on the phone with the mayor or trying to reach the mayor, there were four board members in the private board room?

A Yes.

Q It wasn't in the board room?

A Kane Simonian was in there too?

Q Okay, was there any discussion during that time?

A Yes, and I remember Kane was in there because Kane was saying something regarding pension or severance pay or something I don't remember what he was saying, but he was saying something about what kind of arrangement could be made and whether he could be fired given the fact that he was I think a permanent employee or whether he was a temporary employee - what kind of severance of pension or something.

Q But this five to ten minute meeting you say is sort of a common before a board meeting

A Yes.

Q That the group will sit down and discuss I guess generally the items on the agenda to see if anybody has a particular problem with them. Do you try to avoid these meetings?

A No, I'm aware that that's improper. I indicated in the conference that I had with FinCom members a couple of years ago indicating that that kind of meeting regularly took place and I remember I don't remember who it was now - but saying that that kind of meeting was improper. My basic reason for not avoiding them is that that conversation is going to happen whether I'm there or not. I had

thought specifically of not going there, not going to those meetings because it was improper, but it's going to happen whether I'm there or not and it just gives me a little more flavor of why they are doing and saying some of the things that they're saying and I just have a- If I don't do that everything would be very cut and dry in the meeting and I'd have no understanding or no flavor at all of what they're doing, and that's why I do it.

Q Has the board ever discussed the propriety of those meetings or the impropriety of those meetings?

A No. I'm sure, I don't remember, I discussed it with him myself because I really did think about it after I had the conference with FinCom and they indicated that those meetings were improper and I don't remember if I discussed it with Bob Farrell but I know he knows it's improper but I don't remember if I brought up the issue..Again I've thought a lot about it, they are going to do it anyway and it just gives me a little more or a flavor of understanding why they are doing what they are doing.

Q Alright the vote that was taken at that meeting was to terminate Bob Walsh effective tomorrow.

A Okay, Bob Walsh knew that they were going to vote, he knew within an hour so he was really upset. He knew within an hour or so that they were going to vote or he knew that morning they were going to vote to terminate him at that meeting immediately. Again, when I was coming around to come in that room he said they are going to vote to do it today and do it immediately. So Bob Walsh had typed up quickly during- The first item on the agenda for that meeting was a public hearing-a 121A hearing. During that 121A hearing he was having typed up a letter of resignation because he knew they were going to vote to fire him. At the conclusion of and during that 121A his secretary or somebody brought him and gave him this letter. At the end of the 121A hearing and just as we entered the regular business meeting he said something to the effect Mr. Chairman do you recognize that I'd like to offer my letter of resignation. Colbert moved to take his letter of resignation under advisement and that was voted on and he then immediately I don't remember how I voted on that. He then immediately - he read his motion to terminate, I voted no.

Q And everybody else voted yes?

A And everybody else voted yes.

Q And was that -

A I think I voted no on the motion to take his letter of resignation under advisement.¹

¹In a conversation which supports Cofield's account of the events leading up to Walsh's termination, Walsh told Finance Commission Investigator Karen Schwartzman that he had made no plans to resign until Robert Farrell told him on the night of July 19th or the morning of July 20th that the mayor wanted him fired. Walsh responded by telling Farrell that he would resign, but on his own terms-effective January 1, 1979. Farrell originally said that that was agreeable to him but two hours before the board meeting changed his mind. At that point Walsh drafted a new letter of resignation effective October 31. Walsh discussed the new terms with Farrell and Joseph Walsh. Both felt that the terms were reasonable but said that they would have to check with the mayor. Walsh said that the mayor did not agree with the terms which is why he was fired effective the next day.

On August 15, the mayor attended a meeting held at Lewis Wharf at the request of residents of the waterfront community. During the meeting, which was held prior to the board's designation of a developer for the hotel site, the mayor explained his position on the matter and stated that he would be making the designation, that it would be made the next day and that his choice was Zuckerman.

One important issue that was raised at the time by the residents was the fact that they considered the Cossutta design to be incompatible with the surrounding elements of the waterfront. This, in fact, was the same issue which led to the BRA staff's low ranking of the Cossutta scheme. The mayor responded to that criticism by stating that he felt that the issue of compatibility was unimportant and emphasized his opinion by stating that the John Hancock tower was incompatible with Copley Square and that certain waterfront buildings were incompatible with the North End. Furthermore, the mayor asserted that he had "inside" information that the New England Telephone Company building which is adjacent to the site, would be coming down, which once accomplished, would make the other proposals incompatible with the site.¹ The mayor also indicated that one reason he chose the Cossutta design was because he was impressed with the architect. In fact, White went so far as to say that Cossutta was the only nationally recognized architect competing for the development.

The mayor was also questioned about the low tax expectations from the Zuckerman proposal. In response to this inquiry, the mayor indicated that he was not concerned with the financial implications of this development and felt that aesthetics outweighed all other considerations.

¹A representative of the New England Telephone Company told the Finance Commission that plans are presently being drawn to completely renovate the State Street building for use as administrative offices. He also said that the building will be there for a long time and that there are no plans to take it down.

Although this meeting resolved little, it was apparent from remarks made by the mayor, that he considered the decision to designate Zuckerman his own, and was committed to defending that choice. The mayor in no way offered to change his decision but he did offer the residents the opportunity to meet with Cossutta to discuss possible refinements in the hotel's design.

The BRA board was scheduled to meet on August 17, 1978, just two days following the mayor's comments to members of the waterfront community. Subsequent press reports, disclosing the contents of the mayor's message, encouraged the Boston City Council to take immediate legal action in an effort to postpone the BRA board's designation. The Council's motion for a temporary restraining order was heard some fifteen minutes before the BRA board was supposed to meet. While the judge was deliberating toward his decision on the motion, he received a message to the effect that BRA Chairman Robert Farrell had announced at the beginning of the board meeting that the designation would not be made on that day. Farrell explained his reasoning as follows:

In view of the articles published in the news media a controversy was made, statements made by organizations such as FinCom, statements made by a member of this board—the City Council has stated, the FinCom has stated, a suit started today in Suffolk Superior Court that the board would today only in response to an order, so called, by the mayor the vote to designate Wharf Properties as developer of Long Wharf. I've read a report by the FinCom which I find superficial at best, totally unfounded in fact, demonstrating a complete lack of the development process. I've read the bill of complaint filed by the City Council, filed today which I find little basis in law for, but it's my feeling that based upon and in view of what has been happening, in view of the statements made, in view of the totally unfounded accusations made by members of the media and others that it would be entirely inappropriate for this board to take any action at this time or anytime in the foreseeable future. The Chairman is empowered by the by-laws of this Authority to determine what matters go on the agenda. And I am now ruling, I am sure disappointing to many that the Long Wharf development will not be considered by the Authority at this time.¹

¹Transcript of Robert Farrell's opening statement recorded at the BRA board meeting of August 17.

We will proceed with our regular meeting.¹

¹Even though the vote was not on the agenda, it appeared at that time that Mr. Farrell's remarks were intended to end speculation that the vote would be taken at that meeting. Further investigation by the Finance Commission, however, has revealed that an alleged phone conversation between Farrell and Zuckerman may have been the key factor in the decision to postpone the vote. Joseph Walsh testified as follows:

Walsh Well, the designation was on and off, it was going to come before us and it was not going to come before us. The mayor came to a meeting with John Sloan and Peter Blake, the architect, and made a presentation and Blake had a statement to make and Sloan had a statement to make and the chronology I can't give you but at a later time the designation was supposed to be coming before us - tentative designation - and it did not - it did not come before us. I'm not privy to all the happenings in the background, I don't know what was going on. I - specifically, I would occasionally ask Bob Farrell if he had any idea of when the thing was going to go forward, how it was going to be proposed and if it was going to be proposed. In the interim a new director was designated and then Zuckerman withdrew his - strike that - Zuckerman I think advised Farrell that he did not want to be designated and I'm not sure of the terms on which this took place but the proposal was supposed to come before us, I understood, but Zuckerman apparently contacted Farrell and asked him not to bring it before the meeting.

Question What was his reason? Do you know the reason?

Walsh If my memory serves me, I think he said something above having some kind of communication with the North End Waterfront Group but this is just hearsay and Farrell had a conversation with him I believe.

Question When you say 'hearsay' - who told you that - Farrell or somebody else?

Walsh Farrell told me. I never spoke to Zuckerman. This was my understanding of why Zuckerman called Farrell - to tell him that he didn't want the designation to come up and he wanted to have some communication with the Waterfront - North End Waterfront people. That's my memory.

Cofield's testimony with respect to this matter was as follows:

Cofield [He] had said to me that he had talked to Zuckerman at various points.

Question How many times do you think he's talked to Zuckerman?

Cofield At least twice, I'm sure.

Question You're positive?

Cofield Yes... He certainly said to me that he had had several conversations with Zuckerman and that he had... personally met with him and talked to him.

Farrell testified that during the competition he never spoke with any of the competing developers about anything.

-5-

Two weeks after the meeting at Lewis Wharf, Araldo Cossutta met with representatives from the Boston Waterfront Neighborhood Association in the BRA boardroom one evening to discuss his scheme for Long Wharf. Several other people attended the meeting including: Joseph Berlandi, City Councilor Rosemarie Sansone, representatives from the North End Community, members of the BPA urban design staff, and investigators from the Boston Finance Commission.

At the outset, Joseph Berlandi said that the meeting had been organized as a result of the mayor's promise to "make Cossutta available" to the waterfront community. Although Berlandi specifically stated that he had been instructed by the board to organize the meeting, board Chairman Robert Farrell testified that he had no prior knowledge of the meeting and that he did not authorize Berlandi to do so. He went on to say that if he had had prior knowledge of the meeting, he would have objected to it because he felt that such action was improper. Although Board members Flaherty and Walsh stated that they too were unaware of this meeting, neither shared Farrell's view that the action was improper. The two testified as follows:

Excerpt from Testimony of Joseph Walsh

Q ...The mayor met with the waterfront residents to explain his position in the height of all the controversy - to explain his position and why he was so much in favor of the Zuckerman proposal. At that time the mayor promised to - promised that he would make Cossutta available to meet with the waterfront residents. Okay, now how this meeting got set up or how it came about that it got arranged, I don't know. But I do know that Joe Berlandi and John Dobie set up a meeting at the BRA boardroom seven thirty on some night, some week night to meet - for the neighborhood residents to meet with Cossutta to work out their differences.

Walsh Okay, I'm unaware of this.

Q Would you have approved of that?

Walsh I would approve of anything which would move this program off dead center and if it would result, if such a meeting would result in the North End and the waterfront people, being able to bring about a modification in this Zuckerman design which would make the design acceptable to the people down there.

Q This is prior to designation, right?

Walsh Yes.

Excerpt from the Testimony of James Flaherty

Q ...Are you aware of any meetings that took place in City Hall or at the BRA?

Flaherty No, I was not.

Q To this day, do you know if there was any meetings at - ?

Flaherty No.

Q Would you approve of a meeting that was held in the boardroom between the community and an architect for any one of the developers?

Flaherty Sure.

Q Prior to designation?

Flaherty Sure, why not?

Q Well, I'm not saying you shouldn't or you should. I'm just asking you.

Flaherty Sure.

Q There's nothing wrong in your mind with the community meeting with one of the architects for a project prior to designation?

Flaherty No.

Q Would it be okay also for an architect to meet with the community and only one architect meet with that community in the BRA boardroom, for example?

Flaherty If the community and the architect agreed to that, sure, why not.

The month of September served as a cooling off period, during which no formal action was taken. In a letter dated October 5, however, the mayor called upon the board members to move on the tentative designation. Although the matter was not on the agenda, Colbert responded to the mayor's request by forwarding a motion to designate Zuckerman. The motion carried with three in favor, one opposed.

James Flaherty expressed the general sentiment in testimony before the Finance Commission. He said, "We just wanted to get it over with and end it and you know, to pursue other things that are important to the City of Boston."

Findings:

1. Back in March, the mayor had no reason to assume that the review process had been completed since at that point, only design criteria had been evaluated, and since the selection was supposed to have been based on numerous other considerations. Furthermore, by their own statements, neither the Chairman nor the Director ever gave the mayor reason to think that the design evaluation should have been taken as the final recommendation.

2. The mayor acted improperly in hiring Peter Blake to act as his personal advisor on the matter. It is the BRA's responsibility to evaluate proposals submitted for BRA competitions. The BRA design staff maintains a formal relationship with three independent architects, (the Design Advisory Committee) whose sole function is to provide additional professional judgment on matters of public concern. The mayor does have the right to offer his own opinion on the matter but that right does not give him implied authority to undermine the BRA's mandated responsibility.

3. Once Blake was retained by the mayor and it was clear that his evaluation would carry the most weight with the mayor, he should have given equal time to all eight architects. Blake compromised his professional ethics by reviewing in depth only four of the proposals.

4. It was improper of the mayor to call together a quorum of the BRA board to announce Robert Walsh's intention to resign because a) he did so only to pressure the board members into adopting his choice of developer for Long Wharf and b) he knew that such a meeting would violate the public meeting law.¹ (See footnote - p.71.)

5. The mayor's BRA appointees violated the spirit, if not the letter of the public meeting law by discussing and deciding in advance and in private that due to pressure by the mayor, Robert Walsh had to be fired.

6. Contrary to the opinions of James Flaherty and James Colbert, the mayor does not have the authority to fire the Director of the BRA. The BRA is an independent entity established under G.L. Chapter 121B. Flaherty's thinking - that the

BRA is a line department under the mayor in the same way as is every other department in City Hall is appalling in light of his position as a member of the Authority. Equally disconcerting is Colbert's impression that the by-laws of the BRA allow the mayor to fire the Director.

7. The mayor, in appearing before the BRA board to explain "[W]hy I selected Zuckerman" acted improperly. Though the mayor may and should voice his opinion, he does not have the right to make the selection.

8. The meeting held in the BRA boardroom between Araldo Cossutta, Zuckerman's architect, and members of the waterfront community prior to the designation was improper and contrary to the spirit of competition.

9. The board's vote to designate Zuckerman without first having placed the matter on the agenda and with full knowledge of the public's interest in the issue was irresponsible and was done deliberately to obstruct public debate.

10. The four mayoral appointed board members were obviously placed under great pressure to act in compliance with the mayor's demand that Zuckerman be designated because a) the Director was fired for the same reason and b) the tenure of each member was in doubt because of his holdover status. Even if the mayor did not have the actual authority to fire the Director, he certainly had the authority to release any of the members if they voted against him.

¹The public meeting law (G.L. c.39, s.23B) states that:

no quorum of a governmental body shall meet in private for the purpose of deciding on or deliberating toward a decision on any matter except as provided by this section.

The law also says:

no chance meeting or social meeting shall be used in circumvention of the spirit or requirements of section 23B to discuss or act upon a matter over which the governmental body has supervision, control, jurisdiction or advisory power.

The Finance Commission finds, based on Robert Walsh's testimony [see page 58] that when three of the board members were informed by their appointing authority that the Director was about to resign because he refused to accept the mayor's choice, their own deliberation processes, such as they could have been under the circumstances, moved forward in the direction indicated by the mayor. That meeting, in our opinion, constituted a public meeting and, as such, was illegal. (See also the testimony of James Cofield on BRA board violations of the public meeting law - Appendix N.)

Recommendations

To ensure that future BRA development competitions will be conducted in accordance with the spirit of open and fair competition, and to communicate that commitment to the general public:

1. The Board of Boston Redevelopment Authority should adopt rules and regulations to govern the review and selection process for all future BRA competitions. Such rules and regulations should include:
 - a) guidelines to govern the amount of time allowed to developers to prepare and submit materials for competition,
 - b) rules governing the submission of supplementary materials after the submission deadline,
 - c) procedural guidelines for the equal distribution of information to competitors by the BRA staff, and
 - d) standard procedures for formal BRA staff review of submissions for competition.
2. If the board does not vote in accordance with the recommendations of the Authority's Director, based on BRA staff evaluations, its members should be required to put in writing a detailed explanation showing the bases for their decisions.
3. The designation of Boston Properties (Zuckerman) as developer of Long Wharf should be rescinded. The BRA should select another developer based on evaluations by its staff, the Boston Waterfront Neighborhood Association, and the Design Advisory Committee.
4. To ensure that future BRA Board decisions are fair and equitable and reflect the best interests of the people of Boston, the Boston City Council should initiate home rule legislation to amend General Laws Chapter 121B as follows:
 - a) the BRA board should be expanded to seven members, five of whom would be appointed by the mayor and two of whom would be appointed by the governor.
 - b) each member should reside in a different neighborhood within the city.

- c) members should be appointed for only one term and should not be subject to reappointment.
 - d) when a member's term expires his or her position should be vacant until a new member is appointed but that position should be filled within 60 days.
 - e) a BRA Technical Review Board, made up of City of Boston residents, should be established to advise the Board on matters involving the selection of developers for major BRA projects.¹ The Board as a whole would have one vote in such matters and would consist of the following five members:
 - 1) The Executive Director of the Metropolitan Area Planning Council or her designate.
 - 2) The Director of the Office of State Planning or his designate.
 - 3) The Director of the HUD Boston Area Office or his designate.
 - 4) One independent architect selected by the Boston Chapter of the American Institute of Architects.
 - 5) The Executive Vice President of the Greater Boston Chamber of Commerce or his designate.
5. The Bylaws of the Boston Redevelopment Authority should be amended to ensure that all votes involving designations are on the agenda at least fourty eight (48) hours in advance of the meeting.
6. The four holdovers on the BRA board should not be approved by the City Council for reappointment to the board.

¹Major BRA projects would include all projects with a projected cost exceeding \$1 million.

—APPENDICES—

City of Boston Finance Commission
Report on the Selection of a Developer for
Long Wharf

January, 1979

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2. Permitted Uses

General Business, General Office, Transient Housing.

3. Parcel Controls

- a. Maximum permitted height: The Urban Renewal Plan sets the maximum height for Parcel A-6 at 150 ft. and for Parcel A-7 at 85 ft. However, with the combined parcels, it is strongly recommended that the maximum height at the westerly end of the site not exceed the height of the adjacent Telephone Company Building (approximately 135 ft.), and that at the easterly end it not exceed the height of the Custom House Block building (approximately 57 ft.). These maximum heights do not include elevator penthouses, stair towers or other mechanical equipment.
- b. Maximum permitted F.A.R.: 5
- c. Minimum parking spaces: Interior parking not to exceed 225 spaces shall be provided
- d. Maximum number of rooms: 395

4. Ground Floor Restraints

Any proposed structure will have no "front" or "back" because of its critical location. Therefore, the program for the lower floors of the building should be structured so as to encourage maximum transparency and pedestrian penetration along all facades.

It should also be pointed out that the development team (when chosen) will have to work closely with the M.B.T.A. to insure proper integration of the Aquarium station within the project.

5. Massing

The general massing envelope of A-6, A-7 has been worked out over a number of years as a result of work by the BRA Design Section, a court-mandated community review, and various other historic and environmental reviews. As a result, interested developers and architects must realize that their ultimate programmatic requirements for the building may be secondary to the establishment of an acceptable massing envelope.

2

The following urban design guidelines must be followed:

- a. At its westerly end, the building should not exceed the height of the existing Telephone Company building. In some way, the massing must then "step down" so that, at its easterly end, the building is harmonious with the Gardiner Building and the Custom House Block.
- b. The major sight line from Richmond Street in the North End, across the park, to the Gardiner Building and Custom House Block must be maintained.
- c. The pedestrian easement between A-6 and A-7 (see attached drawing) must be open to the public at all times. This easement must be at least 20 feet in height. Building elements above this easement should be kept to an absolute minimum width so that the easement is as open as possible.
- d. To be most compatible with the traditional wharf building, the building mass of A-6, A-7 should be simple, with the major circulation elements contained within the basic envelope.

6. Materials

The building must be masonry and must be compatible with traditional waterfront materials. Paving treatments must also be sensitively handled.

7. Signage

An exterior signage plan shall be part of the architectural presentation. The regulations of the Boston Sign Code must be strictly adhered to, and no deviations will be supported.

8. Vehicular Access

It is strongly required that vehicular access into the site be from State Street.

D. General Design Policy in Urban Renewal

1. The Design Review Process and Redeveloper's Architectural Submissions for Non-Housing Parcels

URBAN DESIGN DEPARTMENT JUNE 1967

Technical guide number fifteen, "Design Review in Urban Renewal," published by the Urban Renewal Administration, Washington, DC, explains in detail the review process. Quoting from the bulletin's introduction:

MEMORANDUM

TO: Robert Walsh
FROM: John Sloan and John Dobie
DATE: February 13, 1978
SUBJECT: A-6, A-7 Hotel Proposals

The following is our evaluation of the eight proposals submitted for Parcels A-6, A-7 on Long Wharf. Based on criteria from the developers' kit we reviewed and scored each proposal with 400 being the maximum score possible. The scores are as follows:

1. Dernphy (Graham Gund architect)	337
2. Marriott (Marriott design staff)	279
3. Bay Colony Prop. (Huygens and Tappe')	263
4. Philopoulos (C.B.T.)	209
5. Lidapell (Gawteaume and McMullen)	200
6. Perini (Mintz)	189
7. Pattison (Sasaki)	177
8. Zuckerman, Linde (Cossutta and Ponte)	157

We feel that, from a design standpoint, only the first three are worthy of further consideration. None of these are perfect, and changes during the design review process would be necessary for any of these three.

Conversely, we feel that, even with intensive design review, it would be very difficult to achieve an outstanding building with any of the other five submittals.

A/441658

John Sloan

C - 1

Boston Redevelopment Authority
City Hall/Room 900
One City Hall Square
Boston, Massachusetts 02201

ATTENTION MR. ROBERT F. WALSH, DIRECTOR

Dear Mr. Walsh:

In our capacity as members of the Design Advisory Committee of the Boston Redevelopment Authority, we have reviewed the eight submissions for the hotel on Parcel A-6, A-7 in the Waterfront. It is our conclusion that there are only three designs which show the potential to be further developed:

Bay Colony Properties
Dunphy
Marriott

Of these three, Marriott was felt to be the weakest. However, neither of the other two schemes are without problems which would have to be resolved during the design review process.

There is no strong consensus regarding the Dunphy and Bay Colony schemes. Mr. Flansburgh favored the Bay Colony proposal since he felt it to be the best transition between the scale of the downtown and the smaller scale of the existing wharf buildings. Mr. Stahl felt that the Dunphy scheme convincingly demonstrates that a low-rise solution is feasible, and that it would, by nature, better preserve the qualities and values of other waterfront buildings. Mr. Thompson felt that a final choice between these two should be based on the ability and willingness of the team to work with B.R.A. staff throughout the design review process, and the final excellence of the building would be linked to this critical process.

We are happy to have participated in this review and we stand ready to assist you in any way possible to insure the optimum development of this very critical site.

Sincerely,

Earl Flansburgh

F.A. Stahl

Benjamin Thompson

B/7611

cc: John Sloan

MINUTES OF DESIGN ADVISORY COMMITTEE MEETING

Date: February 28, 1978 - 10 a.m.
 Place: B.R.A. Model Shop, 185 State Street, Boston
 Subject: Waterfront Hotel - Long Wharf
 Attended by: For D.A.C. Members Benjamin Thompson, Earl Flansburgh,
 Tad Stahl
 For B.R.A.: Messrs. Sloan and Dobie

Submissions received - (Models displayed)

- #1 Marriott Corporation - In-House Architect
- 2 John Philapoulos Associates - In-House Architect
- 3 Sasaki Associates
- 4 Colony Property Company - Hugens & Tappe, Architect
- 5 Boston Harbour Hotel Development Corp. - Ganteaume and McMullen, Architects
- 6 Boston Properties (Holiday Inn) - Cassutta & Ponte, Architects
- 7 Graham Gund Assoc., Dunfey Hotel
- 8 Perini Land Development Corp. (Hilton) - Sy Mintz, Architect

E. Flansburgh: All the models are at different scales.

T. Stahl: What are controls?

J. Dobie: In the kit we asked for, 40 scale-massing models and some firms actually did that.

T. Stahl: What cycle are we in on developing the sites?

J. Dobie: It must be the 5th or 6th cycle. This parcel was called A-6 and A-7. It combines what were, years ago, two independent parcels. Parcel A-7, which is the most easterly parcel further out on the wharf, was always considered for hotel use. A-6, the other parcel, was office tower. As a result of a number of things including a Court Order, both parcels were combined into one parcel for hotel use. We advertised this as most parcels are advertised, prepared kits and when we were in the preparation of the kit we were charged with trying to come up with a massing envelope which would respond to all the years of work; another restudy was done of everything that had happened in the past - at the same time we did not want a rehash of past.

E. Flansburgh: Was Ben's Restaurant at the end of the wharf?

J. Dobie: No, but it would have been a good selling point. Much of the information in the kit is background on the wharf. We asked for a set of drawings basically at 16 scale of a simple massing model at 40 scale.

John Dobie showed a map of the general area of Long Wharf showing area of hotel surrounded by the Chart House Restaurant, North of site is Waterfront Park, the Aquarium and New England Telephone Building.

J. Dobie: He advised one of the things we are most concerned with is the fact that if we were creating a parcel of size such as we have here, we have to wall off the north end of the parcel from the south end. This idea is well stated in the kit. Also there had to be a major pedestrian easement through the site and we provided the developers with an engineering drawing with a pedestrian site on it. As one looks through the site you have a view of both the edge of the Park and the water itself, so you have a sense that there is a public open space and water. The other major site line and pedestrian route is the "Walk to the Sea" down South Market Street which starts at City Hall, goes through the Faneuil Hall Markets — the ramps on the expressway have been removed and you have a clear shot into this edge of the Waterfront Park. We felt it was very important that the north facade respond well to the whole geometry of the Markets as one is walking on the plaza of City Hall. Also there has to be a sense of marine activity here. The other interesting thing is this is not a straight line; in terms of this edge of the Parcel it doesn't line up in a straight line with the geometry of the markets. Indeed when you are standing here, you are actually looking at the (wall?) (hill?) of this hotel parcel and we actually went out with a (transit?) at one time and you actually are seeing a portion of this (wall?).

E. Flansburgh: On that "Walk to the Sea" is the idea that the Waterfront Park will be the terminus, or something in this composition will be the end?

J. Dobie: The Waterfront Park itself is important but the other thing to bear in mind is that the remainder of Long Wharf is owned by the B.R.A. and that will become an open space also. If that walk does exist the Waterfront Park is not the terminus itself. It is a node off this. We have always talked about how good it would be to have a sailing ship that we could tie up here at the end of the wharf; a cocktail lounge, for instance. Then we could see the masts of the ship over the central artery. The most logical terminus would be the end of Long Wharf. How the northern edge of the hotel is treated is important; it should respond well to the Park itself and also encourage people to continue walking to the edge of the wharf itself.

J. Sloan: Most of the submissions had trouble with this problem.

J. Dobie: An old warehouse existed on this site originally and there is potential for reuse of the slab. The walking surface of Long Wharf, when regraded and repaved, will be less than 16 ___. The existing slab of the warehouse we removed was sited at elevation 9 feet. We certainly did not say in the kit you had to reuse the slab. It was felt years ago that there might be reuse potential in the slab. It is extremely large, with extremely heavy flooring loads; it is on piles 6 feet with center (slip?) 6 feet on concrete. It is very large.

T. Stahl: Usually full of water.

J. Dobie: Yes, we call it our southwest pool. We use that as our reuse as underground parking. Essentially it would be more than $\frac{1}{2}$ level but not a full level down. You would have to deal with a retaining wall or parking garage directly along this edge.

T. Stahl: The edge of that wall is the edge of the parcel?

J. Dobie: The actual configuration of the slip is a little irregular.

T. Stahl: You don't have an extra 10 feet to play with?

F. Dobie: No, the BRA is in the process of beginning the repair of Long Wharf and the sea wall. The work is very expensive; it costs about \$1,000 per 12 feet of wall. We were faced with the cost of rebuilding a portion of Long Wharf. Now we have a contract beginning in April amounting to hundreds of thousands of dollars.

T. Stahl: Did it survive the storm in good shape?

J. Dobie: We had army engineers down there. No major damage.

T. Stahl: Are all of the developers aware of where the water level is?

J. Dobie: In this location at the edge of the wharf even in the previous storm there was a yellow car sitting there and I watched the water level rise to the doors of the car.

B. Thompson: How high did it get actually? I saw the first storm but I was sick in the big blizzard. How high did it get in the Chart House the second time?

J. Dobie: A couple of feet.

T. Stahl: Lewis Wharf was evacuated the second time.

E. Flansburgh: What is the level of the Chart House floor?

J. Dobie: 14½ feet.

E. Flansburgh: If we were to say let's (grade?) the development project we would have to talk about 16 feet?

J. Dobie: Yes, 16 feet. The Waterfront Park was designed in such a way so that the lower portion of the Park would flood every 79.3 years. The other controls in the kit are in general language about being harmonious and compatible with existing surroundings (buildings) in terms of the Court-ordered mandates. We had restrictions on the number of rooms, no more than 400. Regarding parking, no more than 225 cars. All of the proposals are within the guidelines; within eight rooms.

B. Thompson: How did you come up with 225 cars?

J. Dobie: We didn't; the Court did. It was mandated through the Courts based on the earlier proposal of which Sy Mintz was the Architect and which was reviewed by another group of the D.A.C. two years ago.

T. Stahl: Did it ever go beyond that?

J. Dobie: We did not see anything for two years but it came right back in this form. In view of our rather strained relationship with the Waterfront residents that is the reason all of these numbers came about. The settlement was keyed into the Sy Mintz massing and there were numbers attached to it at that time.

T. Stahl: I am assuming they were the designated developers at that time?

J. Dobie: Yes, they were. The project languished for a while, about two years, and then we decided to readvertise it. This is a totally different team but many of the persons previously involved have come back in.

E. Flansburgh: As members of different teams?

J. Dobie: Yes.

T. Stahl: When you say compatible, do you mean brick or granite?

J. Dobie: We said the Redevelopment should be aware of the predominant character of the area and we felt that masonry would be appropriate with waterfront materials and surroundings.

B. Thompson: Did you analyze the economics?

J. Sloan: That is being done by Stewart Forbes.

T. Stahl: Each proposal is viable in view of getting it built, etc., financially?

B. Thompson: Any of these schemes could be done at this point because the site is so viable.

Sloan/Dobie: I think almost anyone of these would be viable.

MARRIOT HOTEL PROPOSAL

E. Flansburgh: Who is the Architect for the Marriott Hotel Group?

J. Sloan: They have an in-house architect and I have no idea who the person is. We felt this was a very straightforward proposal, one of the few that responded to the pedestrian easement and to the site. It emphasized where it was and guided you through.

T. Stahl: Are there limits set on the easement?

J. Dobie: It is based on visual considerations; there is water line. The easement is between these two dotted lines. It was extremely important that you did not wall off the two halves of the parcel; it had to be two stories in height.

J. Sloan: This particular one, we felt, responded quite well to the site. There is a bit of a problem in this corner where it meets Waterfront Park, in that the vehicular access was in conflict with the Walk to the Sea.

B. Thompson: Do they have parking down here too?

J. Dobie: You have to go down under the water line and then back up.

B. Thompson: What do you mean "under the water"?

E. Flansburgh: You mean high tide water line?

J. Dobie: I mean the water main.

J. Sloan: This had a bit of a problem because this area here is the hotel area and they were using this as a putting green; also the pool area gets a lot of shade.

E. Flansburgh: The pool and putting areas are the northeast side and it ignores that fact.

J. Sloan: Most people had a lot of difficulty with this area; it appears to be the Achilles Heel of the proposal.

B. Thompson: You walk down here along the edge?

J. Sloan: This will be developed by the BRA so that whatever happens here is our problem.

T. Stahl: How will they separate their space from the public space? That could be a real problem.

J. Dobie: It is unclear.

J. Sloan: The way we responded to that is that we started calling a number of schemes "back porch". There was a wall or something that kept

the public separated from the private space. Some schemes had a transition of semi-public space; others made it sharp.

E. Flansburgh: At this end it is very awkward.

T. Stahl: There is no fenestration at that part. Let's look at elevation.

J. Dobie: We don't have elevations here.

JOHN PHILOPOULOUS ASSOCIATES PROPOSAL

J. Sloan: In this one we find conflict with the "Walk to the Sea". All of the developers say they want to make this their pilot "class" hotel - i.e. Marriott and Philadelphia? And not to take their past performances into consideration.

T. Stahl: Are there any obvious problems here - parking, service, access, etc?

J. Dobie: This one works extremely well from those points of view.

J. Sloan: We graded service as to whether it crossed pedestrian easement.

J. Dobie: It would be our intention to keep vehicles off the wharf. Wherever heavy servicing to the Hotel is necessary, we would use limited hour servicing.

T. Stahl: I am assuming taxis only would be allowed.

E. Flansburgh: Where is vehicular access?

J. Dobie: State Street.

J. Sloan: This one would work very well in plan and at ground level. We were very pleased with it and had no major problems with it as far as plans were concerned, but we felt it had a tendency to operate at a longer scale. It was not stepping down, but on a singular plane, as is the Graham Gund Hotel in Cambridge.

T. Stahl: What is it faced with?

J. Dobie: Concrete.

J. Sloan: This was a surprise to us.

J. Dobie: The Hugens & Tappe proposal is also partially concrete. The amount of mass over easement in the Philopoulous submittal is also a concern to us.

T. Stahl: That (pointing) is a hole through the building?

J. Sloan: It seemed to work a little better from the north to the south.

B. Thompson: The entry on this one, you come in from the side?

J. Sloan: On this one, to a lot of people trained to respond to the "Walk to the Sea" and to vehicular access - this was quite successful in both regards.

B. Thompson: Where do we go for parking?

J. Dobie: Below the whole site. We were concerned about amount happening on this proposal - other wharf buildings are so simple.

T. Stahl: Garufo's housing is very simple and quite characteristic of this.

SASAKI ASSOCIATES PROPOSAL

J. Sloan: There are a number of problems with this proposal - i.e. the back porch use of the site.

E. Flansburgh: I am bothered by it. This has the appearance of a rather poor development done in London right after the War.

J. Sloan: My own thinking about this was that whoever did this was responding to Venturi, and it came out very heavy.

T. Stahl: It is not a very happy thing to be next to.

E. Flansburgh: The tennis court looks like something that doesn't like its' neighbors. It looks as though it was done by three different folks who did not know each other. This is a sketchy design and model; a pitched roof should be done well.

T. Stahl: Citi Corp. gets away with it.

B. Thompson: This could be an elitist concept; all those poor people in the Waterfront Park can't go over and use that swimming pool, etc. The people in the North End will protest because they really don't want us to do anything there.

T. Stahl: This proposal is very wrong for this part of the City. I don't think we should take any more time on it.

HUGENS & TAPPE PROPOSAL

J. Sloan: This is rather strong. Most of the ground floor treatment responded very well. We had some problems in that the service area extended to the pedestrian easement. Also, the ground floor had parking at this point. Again, the north corner seemed to present a blank wall to the "Walk to the Sea". We felt this scheme could be modified in design review. It has some aspects that are good; we liked the restaurant that took up the "back porch" problems and brought life and activity to the water's edge.

E. Flansburgh: It finds a way to wend through to the public side of the building which is kind of nice.

J. Sloan: (Pointing) we felt this was an awkward relationship (geometry)

E. Flansburgh: If this pedestrian slit through here could be acknowledged in the building's upper floors then you could get light in the afternoon and it would be very, very nice. This is northeast corner.

T. Stahl: I think I might even have put it in the guidelines - that the easement could not work like a hole through the building, however well it's handled on the ground level plan.

J. Dobie: I think you're right; it does look like that.

B. Thompson: It has a strong facade here. The only way to change that relationship would be to make it higher here.

T. Stahl: I would prefer to have a sense that the building fronts to the Waterfront rather than back to the City.

E. Flansburgh: When the BRA is successful in getting money to put the expressway underground, that will make a change.

T. Stahl: (Pointing th N.E.? corner) - That is in shadow all day long. What about materials?

J. Dobie: The roofs are copper; rest is grey precast aggregate.

T. Stahl: Copper roof is "Hokey".

E. Flansburgh: You are not going to get it - so that is academic.

B. Thompson: If you take it from in there, it will dominate the Park to the detriment of Long Wharf.

T. Stahl: You will have heavy shadow in that open area in northeast.

E. Flansburgh: This is the only scheme we have seen so far that makes a marriage. This all sort of suddenly begins to fit together - the Chart House, the Custom House. There is an element that is going around like this end; another that is going up here.

T. Stahl: Will we have glass canopies on the restaurant?

J. Sloan: No, copper.

T. Stahl: I thought they were taking a leaf from Ben's book.

BOSTON HARBOUR HOTEL DEVELOPMENT CORPORATION
Ganteaume and McMullen, Architects

J. Sloan: This was not worked out. It was done rather fast; they left out the MBTA Station. I would like to look at how they integrate the MBTA.

T. Stahl: Are there any proposals that are unworkable in that sense?

J. Sloan: We felt there was only one, in fact, that separated the MBTA, and that was Cassutta's.

J. Dobie: Most of them did work it in.

J. Sloan: (Pointing to Hugens & Tappe model) - Here is MBTA.

It was not our intention that we would want to see an integration of the building into the MBTA Station. These people did not get to that point, they left it out. One of the problems was the issue of the garage and the "back porch" being treated as a "back porch". You walk along the water's edge and look into a garage which is a problem. The northwest corner had some problems in that it presented a blank wall onto the pedestrian easement of the "Walkway to the Sea".

E. Flansburgh: These people have done a lot of industrial buildings, a Route 128 kind of building. They have been in business some twenty years. Their work is not terribly distinguished.

J. Sloan: They have problems with the MBTA and entrances to the hotel. We felt their strongest feature was the sky space that angled off to the water and that is sort of what we wanted to see happen.

T. Stahl: (?) It is nice to have so much site (space?) available so as not to encroach on that building there.

J. Dobie: There are very interesting ideas in this one but because of the problems and the time element it would not really work out.

B. Thompson: Is that parking?

J. Dobie: No, that is outdoor recreation.

E. Flansburgh: When you walk to the sea you look into a parking garage.

BOSTON PROPERTIES
Cassutta & Ponte, Architects

J. Sloan: Analdo Cassutta has come up with something very similar to his work for the Christian Science Church. We had a bit of a problem with this one. It has a strong statement and we like the building but think it is inappropriate for the site. No MBTA is shown.

B. Thompson: It is an idea. I can see that idea being generated successfully somewhere else.

J. Sloan: There is nothing I can say about this. We analyzed it from a technical point of view. He brings automobiles all the way through down to the site and back. The creation of this Park is again an idea, but we would have to pay for it and we have no money at \$1,000 a foot.

T. Stahl: It is a nice element.

E. Flansburgh: Most of these schemes do not acknowledge the sun. This scheme acknowledges the sun in the forecourt, but the forecourt becomes a service area. It is like a Chateau, but there would be trucks for servicing.

T. Stahl: It is a wholly inappropriate form for this neighborhood.

B. Thompson: Is there a second floor?

J. Sloan: There is a formal atrium for half of the building.

T. Stahl: It is the kind of building that should never be penetrated from side to side, only from the ends.

B. Thompson: It creates a tremendously strong wall.

J. Dobie: This is Holiday Inn.

E. Flansburgh: You should see the one in Beirut(?).

J. Dobie: It would be done by the European arm of the Company.

E. Flansburgh: We do have a kind of end - the very peculiar access that comes down from City Hall Plaza - then zings it out to George's Island.

GRAHAM GUND ASSOCIATES, ARCHITECTS

J. Sloan: Our basic response to this was that it is a low-rise scheme, that it solved the "back porch" approach. One of the things I like is the hard edge of a building on the waterfront; it has the feeling of a hard pier.

T. Stahl: Ground level parking space in the heart of the building is a very good idea - it is the only way it would work 100% successfully.

J. Dobie: At first I wondered why they were putting so many hotel rooms looking into the courtyard, but when you look at the scheme there are very few rooms that look into the courtyard.

E. Flansburgh: We have one courtyard covered, then we cross a little bridge and find another court yard open. These are wonderful things, but heating them differently diminishes the effect.

T. Stahl:(?) Having (scales?) and different functions may solve this.

J. Dobie: The other courtyard has more recreational things.

T. Stahl: I like the idea of getting landscaping through that thing, through pedestrian easement.

J. Dobie: These are meeting rooms here. We felt a restaurant and bar should wrap around.

J. Sloan: We felt that could be handled in design review. Another criticism we had was the site line from Richmond Street.

J. Dobie: In the restudy the site line from Richmond Street to Long Wharf would be included. This is one of the few schemes where you are not able to see the Chart House. I would like the members of the D.A.C. to make a statement as to how important that is.

J. Sloan: The site line is there but it is certainly lopped off at the lower floors.

T. Stahl: I think it would be easier to give up seeing the Chart House from here because you still have a handsome view of the Custom House Block.

E. Flansburgh: I have difficulty with artificial historical buildings. These were warehouses and have their own connection which we admire. This building is pseudo-warehousing rebuilding. The Hugens & Tappe Building is more in keeping; a traditional building rather than creating an artificial kind of thing.

J. Sloan: I think we responded in some degree strongly to a low-rise building that seemed positive. We are also prejudiced because we have seen the drawings for Union Wharf which are very eclectic. We had a lot of problems with design review because how far do you go in accepting materials and use of materials that are definitely eclectic and we had a lot of problems with that.

T. Stahl: This is not so severe.

B. Thompson: What are these?

T. Stahl: Those are piers up in the air (?). I think there is definitely a strong point for this site; the hard edge, the private space being really private - all of those things are very good.

J. Sloan: We are seeing more and more of the use of materials that are really traditional and people respond to them better. The new stuff doesn't work.

E. Flansburgh: The thing that really bothers me is that a building which is a new building looking like an old building - one that has been rebuilt.

T. Stahl: What you have on Atlantic Avenue really bothers me. This is piece of parking structure, then the appearance of these three separate buildings. (Atlantic Avenue facade by Phone Building). It looks like three separate buildings. I think it could be handled far better than it is along here. This whole system could be handled better.

J. Sloan: This was the only solution that we felt really would solve this relationship.

E. Flansburgh: What is the ship? Will there be a real ship?

J. Dobie: I think they were interested in coming up with one.

B. Thompson: When you see a lot of schemes you begin to think of what should be done.

T. Stahl: This should be done. However arbitrary this thing is, the tree area, and it is the Architect's job to make it look great.

E. Flansburgh: If they were to take this facade and not necessarily have two buildings; you could literally put that in response to that and make it only half of that instead of that. (Is this in reference to tower near Tel. Bldg?)

T. Stahl: I would suggest making a break in that facade and in this facade and split the two buildings.

J. Sloan: We could physically extend the trellis so that this would be a major entrance through the trellis.

T. Stahl: The idea that you could stand here and this thing would really open. That corner is blocking a tremendous amount when you come that way.

B. Thompson: It is really an interesting scheme. I would suggest you make whole thing smaller - build this and add that to it. This thing is 20% bigger than it needs to be.

J. Sloan: Those are rooms at the upper levels.

E. Flansburgh: This is Dunfey; they will never be able to afford to do that.

B. Thompson: If you went to the extent of doing that, then you could sit here and go into the garden and the living quarters.

J. Dobie: The glass wall will recess.

E. Flansburgh: The scale is quite good. This is the Harbor. The sides(?) have a view but difficult to deal with. The rooms - there are lots of restaurants that look out the Harbor.

T. Stahl: If the hotel operator can live with those conditions, that is good.

J. Sloan: The best view type situation would be a Harbor Towers.

E. Flansburgh: The view should be one of visual contact with the edge of the Harbor.

T. Stahl: Some of these internal spaces could solve that rather than being surrounded by hotel rooms.

J. Sloan: High rise like One, Two, Three Center Plaza set a very good precedent for other things.

B. Thompson: I wonder if they kept it lower here and put a tower there.

J. Sloan: It would be impossible to put a tower there also. It needs a transition to the Park.

PERINI CORPORATION - (HILTON HOTELS
Sy Mintz, Architect

J. Sloan: This is Hilton Hotel submission. We were very surprised with this scheme. Sy was original on this. We felt that it worked quite well. Everything was there programatically. The lobby worked in both directions, the massing worked well, the elements necessary to the wharf worked well. We had problems with the back portion which we felt had been overworked.

T. Stahl: It is an appallingly bad design.

E. Flansburgh: "Overworked" described it very well.

J. Sloan: It has a lot of stuff going. I have never seen anything like it. It is sad because he put so much time and energy into it.

B. Thompson: It looks like a resort hotel; one you would find if you went to the Bahamas or one of those places.

T. Stahl: It is not Boston in any way. This is far too large, there is not so much volume as rooms. It is surprising to see how small Cassutta was able to make his.

E. Flansburgh: Would they be able to afford to do it?

T. Stahl: This building here was extra ordinarily successful.

J. Dobie: Sy Mintz was the architect for that. Here you have all the HUD Regulations, a very nice piece of work.

E. Flansburgh: A companion building to that over here with some unusual character to it would have been the ideal solution.

T. Stahl: If you scratch off some of the fairly fanciful revisionist kinds of things, as a plan it has a very simple straightforward structure.

E. Flansburgh: It is like assembling the Boston Symphony Orchestra and then telling them all to do their own thing.

B. Thompson: Why not a two-stage competition in which you submit one thing and then add two hours for revisions? One thing is - the Waterfront Park, the whole area, it is interesting that even Sasaki Associates did not try to enlarge the perspective in a way and just leave general landscaping around the whole thing. One of the things Graham Gund is doing - I do like that edge - it is a bit much up here, but he is not trying to make a bad experience on the edge. But whatever we think we don't have a competition going on.

T. Stahl: It needs design revision here very much.

B. Thompson: It could be very ugly. It could turn into a "hodge-podge", if that went, and destroy the beautiful elements, the old buildings out here.

T. Stahl: I suggest dropping four schemes #3 Sasaki, #5 Ganteaume & McMullen, #6 Cassutta & Ponti and #8 Sy Mintz.

E. Flansburgh: Regarding #2, John Philopoulos, if it had been conceived in brick it might not be so bad. His Howard Johnson's is quite successful.

T. Stahl: Is it your aim that we select a scheme, or that we rank them?

J. Dobie: What you have done so far is very good.

J. Sloan: If you could eliminate one more, if we were left with three that would be a good idea. However, if you want to come up with a single recommendation, that is fine too.

T. Stahl: I agree with Ben that we should drop two.

B. Thompson: The front door on #1, Marriott Hotels, is rather unacceptable. I think there is a sensitivity in the model, it seems a lot smaller. All these projects, do they sometimes get redesigned; they probably should.

T. Stahl: That is the scale of the model.

E. Flansburgh: Are they all the same size?

J. Dobie: No, they were supposed to be, but they are not.

B. Thompson: Is it O.K. to say "would you do this in brick?" #2, Philopoulos.

Sloan/Dobie: I think we have a lot of flexibility. It has been done before.

B. Thompson: I think it is less heavy when done in brick.

T. Stahl: The Graham Gund is good for this particular piece of land in the City. The basic benefits are much more important overall than what you could get out of any level of rehabilitation or redesign starting from essentially a mid-rise idea.

E. Flansburgh: I don't know enough about this scheme to make enough of a comment. If I had to choose 2 or 3, I would choose #4 Hugens & Tappe and #7, Graham Gund. The transit is handled better by Gund, but we do have other buildings in the area and I think Hugens & Tappe responds better to these. I think too that in their scheme Hugens & Tappe respond to this Park and try to pull it into the scheme and they are successful.

T. Stahl: I think it is important to continue reinforcing the scale even when it does not agree with the rest of the financial district. I think it maximizes the identity of the neighborhood.

J. Sloan: We have been talking about the Telephone Company Building as a potential rehabilitation.

E. Flansburgh: It could be upgraded or eliminated?

J. Sloan: I don't think there is much of a tendency for its' preservation. As a general course we would push for retention.

T. Stahl: Strip the facade and do something different. As a structure it has a lot.

J. Sloan: Dunfey Hotel, Graham Gund's rendering, we were taken by this. It has a very different sense than any of the other schemes.

T. Stahl: They are beautiful drawings. I would like to find out where the renderer hangs out. Chimney stacks are not basic to the scheme so I see it as a low rise.

E. Flansburgh: We will recommend two and let you guys go from there.

J. Sloan: We are going to write to the Marriot Corporation commending their work. Whoever did that scheme did a commendable scheme.

J. Dobie: I met with the Marriot Architect. His name was Rene Gaucke(?), a very sensitive guy.

J. Sloan: If you want to recommend two schemes, that's up to you.

E. Flansburgh: If Marriot is going to get into more expensive schemes; if they want to do better than the typical Holiday Inn facility; they have been gradually getting better and better. They have upgraded that New York Hotel on Central Park West.

B. Thompson: Let's talk about the process for just a minute. I am very interested in this. How do you arrive at what's a fair way to hold a competition? I don't know what the particular ground rules are. Is the process to present schemes which have a certain kind of sensitivity to the site, but also indicate a design attitude and, hopefully, with the feeling there is flexibility? The trouble with competitions is that you never deal with the client. The second trouble is you don't have enough money to solve the problem satisfactorily. You certainly know that problem. I don't expect to see that problem solved. It has services, rooms, shops, heating, parking; it is a wonderful problem and I love it. I hope you are able to affect in this process the design of whatever is select enough. I would critique. The two schemes are quite remarkable; Graham Gund and Hugens & Tappe. On some of the schemes a lot was spent and on some a little was spent. When you get serious and you get operators you get into a much more normal architectural relationship. I will leave it at two which may make it more difficult for you. I will tell you my prejudice. I like what you have to say relative to the heights and the attitude. I think this (Graham-Gund) could be very nice and interesting. The edges and the rooms look like they would be shown. Like everyone else I am bothered by gadgetry. This is a little "hokey" here and I would hope those kinds of things would disappear. It would look like Sy's building which we have been admiring. If there was any way of, without making a high massing here, getting this back or somewhere, then I don't think it seems so dominant.

T. Stahl: If the facade could get shorter - is there any real (?) to that open space here (?) pulling this whole unit _____.

B. Thompson: We would like to see more of the real old building than we would of this one which is a new old building. I think Earl's point about tying into the corridors is a very good one.

On this schema, Hugens & Tappe, I am bothered by the block. I have seen the high massing down there; if there is any way of dealing with that. I can say we are going to be looking at that piece of facade right there.

J. Sloan: I am not too sure it is possible. There was a maximum massing envelope.

T. Stahl: That really walls off.

J. Dobie: These models are not really accurate.

T. Stahl: If you could accept the line of the south side of South Market Street, then there is about half of that facade that is coming right across your view. It is only 5 stories and does not make that much difference. If it is 10 or 12 stories, it makes a difference. I just don't like the appearance of it. However, it is possible to get a solution at the five-story scale, but not at the ten- or twelve-story scale.

B. Thompson: (Re: Hugens & Tappe) I also agree that if they go copper roofs, that would be too bad. Too much new in the perspective. Let's hope that this was rendered because the fellow wanted this working on a tie-in to his real interest. If you can afford the luxury to make the Park tie in all the way around here it would be really great.

J. Dobie: This is actually a development site. It came about as a screen (?) for the artery.

T. Stahl: Is that going to come along like Union Street?

J. Dobie: Yes.

E. Flansburgh: If you look at the complex of Gund and the Hugens-Tappe idea, we are not going to prove anything because you can make a case for both of them. I have looked at this whole complex here of Hugens & Tappe; this and that building. If we could deal with this building in some way so that it was more responsive here. This is an urban plan; it responds to the total area, Harbor Towers and the lower buildings over there. If we were to do it, then we might do something different, but the idea of this plaza space here, open enough, allows you enough distance to get away from the shade of the building. You really feel there is a connection between them. The restaurant has a view here in terms of looking at the Harbor. The restaurant would be in the shade and the Harbor in the sun. I feel I would make Hugens & Tappe #1 and Graham Gund #2 simply because I like the way Hugens & Tappe solved the problem rather than the way Graham Gund has solved the problem. Given this vocabulary, Graham Gund has not solved the problem and Hugens & Tappe has a most successful solution.

B. Thompson: If you were on the urban design group what would you recommend about the higher element on the Hugens-Tappe building?

E. Flansburgh: I think what I would do is, I would look at that collective facade with that massing. Over here I think he has dealt with it very well, in terms of this restaurant and this little park here. The problem is transit and what you see when you go by the end of the building. I might even have a descending peripitously so that you get a feeling you are coming into a canyon, but not a vertical one.

B. Thompson: This is another element, but not a high wall.

E. Flansburgh: If you cascaded it, like a flying buttress, it might work.

T. Stahl: Graham Gund is the best leverage for getting something to work.

B. Thompson: If you come down here you see just a piece of a long facade.

T. Stahl: If it is a workable five-story scale for this site, it is clearly better in my mind. I like it. This Graham Gund has a workable kind of solution.

J. Sloan: Is it possible to say the D.A.C. would come up with two schemes as suggestions?

T. Stahl: Graham Gund - there is the questionable fault of the front entrance. (Re: G. Gund) The facade needs work around here. The line of Atlantic Avenue; if I were working on this I would try to set this building back somewhat so that the space here opens in from the point of view of getting into that hotel. Where the vehicles go to get there is more important than having a street to get there. I think, in terms of getting at this building and giving it some character along Atlantic Avenue, is very important.

This whole corner business here needs work, but given the size of the site and the way this accommodates the site right now, I can see it all being accomplished. It has not responded enough yet. This building sits very comfortably in almost every respect.

J. Sloan: A letter from the U. D. staff to Mr. Walsh narrowed it to 3: Graham Gund, The Marriot Hotel and Hugens & Tappe. The last two were at a ranking of 5 to 6 points of each other.

J. Dobie: If you had a question, Hugens & Tappe would have come up slightly higher.

J. Sloan: From our standpoint we were taken by the Graham Gund scheme; the relationship between the water and the building; from a design standpoint only 3 are worthy of consideration. None are perfect.

NOTES: John Sloan is going to draft a letter to D.A.C. members advising them who was chosen.

Marie Murphy to send copy of letter to Earl Flansburgh.

Meeting concluded at approximately 12:30 P.M.

FINANCIAL ANALYSIS OF WATERFRONT HOTEL PROPOSALS (A-6/A-7)EVALUATION CRITERIA FOR COST ESTIMATES
WATERFRONT HOTEL PROPOSALS

<u>Cost Item</u>	<u>Recommended Cost Per Room</u>
1. Acquisition and Site Work	\$3,700/Room
2. Basic Construction Cost & FF & E	\$47,000 to \$60,000/Room
3. Promo, Sales, Pre-Opening, etc.	\$3,000/Room
4. Fin, Legal, Tax, Conting., etc.	\$5,000/Room
5. TOTAL DEVELOPMENT COST PER ROOM	\$60,000 to \$65,000

FINANCIAL ANALYSIS OF WATERFRONT HOTEL PROPOSALS

TABLE I

COST ESTIMATES PER ROOM

NUMBER OF ROOMS	Per unit Wilton 395	Boston Prop. Holiday Inn* 395	Bay Col. Prop. W/F Park Hotel 395	Ltdapele 395	Marriott 395	Ph Hopolis 57 \$11/sf	Gund Duncey 394	Pattiso Can. Pa 395
LAND ACQUISITION/SITE WORK Acquisition*								
SITE WORK	3,000* ¹ \$11/sf 709	3,000* ¹ \$11/sf 0	4,050* \$14.43/sf 1,646	3,000* ¹ \$11/sf 785	2,532 \$9/sf 670	3,038 \$11/sf 0	3,000 \$11/s 0	3,000 \$11/s 506
FINAL ACQUIS./SITE WORK	3,709	3,000	5,696	3,785	3,670	2,532	3,038	3,506
ARCHT. & ENG. FEES	2,025	2,150	3,005	3,590	2,152	2,785	1,924*	2,532
Total Basic Const. Cost Incl. Amenities & Garage	10,256	45,570	48,408	39,265	40,151	47,848	37,228	37,848
Allowance for furniture, fixtures, equipment	10,387	6,330	8,250	8,000	7,643	6,329	5,993	7,000
TOTAL COST PER ROOM INCL. BASIC CONST., AMENITIES, GARAGE & FF&E	30,643	51,900	56,658	47,265	47,797	54,177	43,221	44,848
Total Promo, Sales, Adv., Opening Fest, Pre-opg & Oper. Inv.	3,309	1,900	1,139	2,052	3,015	1,266	0	1,899
Total Fin, Htg, Legal, Taxes, O/H, Conting.	7,797	3,950	6,507	4,005	5,199	5,063	4,577	7,975
TOTAL PROMO, SALES, ADV., OPEN. FEST, PRE-OPEN EXP., OPEN WKG CAP & OP INV, HGT, LEGAL, TAXES, O/H & CONTING.	11,106	5,850	7,646	6,030	8,214	6,329	4,557	9,874
TOTAL DEVELOPMENT COST PER ROOM COST	26,744	24,88m	28,08m	24m	24.5m	26m	20.88m	25m
¹ Land acquisition consists of 110,905 sq. ft. at approximately \$11/sf = \$1,200,000 : 395 rooms = \$3,038 (actual per room).								

*2 This figure also includes Clerk of Works \$50,000; Testing \$50,000; Other \$60,000. When \$160,000 is included in Archts. & Eng. fee, makes fee very low; this is possible because architect is 40% equity partner.
** Revised proposal submitted April 28, 1978.

TABLE II
REVENUE PROJECTIONS PER ROOM PER YEAR

	Perrini Hilton	Boston Prop. Holiday Inn*	Bay Col. prop. W/F Park Hotel	Lidapel	Marriott	Philopolis	Gund Dunsey	Pattison Can. Pat
Number of Rooms	395	395	395	395	395	395	399	395
Year of Occupancy	3	3	3	3	3	3	3	3
Occupancy Rate	75%	80%	75%	80%	78%	75%	72%	75%
Average Room Rate	\$50.70	\$56.60	\$57.00	\$57.50	\$50.13	\$50.00	\$51.00	\$52.00
1. GROSS INCOME								
Rooms	13,076	16,697	15,603	10,924	14,271	13,600	13,403	14,235
Food/Beverage	13,866	5,845	10,536	13,790	11,532	10,127	7,342	10,373
Other	1,904	1,213*2	1,716	1,706	1,706	1,27	2,494	1,193
TOTAL GROSS INCOME	29,846	23,755	27,882	32,714	27,509	23,942	23,239	25,801
A. INCOME RATIOS:								
Rm Sales: % G.I.	47%	70%	56%	58%	52%	57%	58%	55%
Food/Bev Sales: % G.I.	47%	25%	38%	42%	42%	42%	32%	40%
Other Income: % G.I.	6%	5%	6%	1%	1%	1%	10%	5%
F/B Sales: % Rm Sales	(99.9%)	(35%)	(67.5%)	(73%)	(81%)	(74%)	(55%)	(73%)
2. OPERATING EXPENSES								
Direct	14,005	9,471	12,404	14,916	16,514	10,396	10,950	10,950
Indirect (O/H, Adm)	5,416	5,100	5,867	7,094	2,372	3,810	4,668	4,668
TOTAL OPERATING EXPENSE	19,421	14,571	10,351	22,010	18,916	14,946	14,206	15,610
3. GROSS OPER'G PROFIT	10,225	7,657	9,531	10,704	8,673	8,996	9,033	10,183
4. DEDUCTIONS								
Allow for RE tax *	1,000	800	900	760	856	1,076	1,165	899
Allow for Mgt Exp	2,035	1,170	810	902	1,734	254	704	903
Other Deductions	805				551	405		
TOTAL RE TAX/NGT/OTHER	3,848	1,970	1,710	1,742	3,103	1,330	2,354	1,802
5. TOTAL NET INCOME AVAILABLE FOR FINANCING & RESERVE FOR REPLACEMENT	6,377	7,214	7,021	8,962	5,491	7,666	6,679	8,301

*1 Revised Financial Data - Submitted April 28, 1978.

*2 Includes \$140,000 Annual Rental Income for 20,000 s.f. of Additional Commercial Space.

TABLE III

FINANCING ASSUMPTIONS (\$000)

	perini Hilton	Boston Prop. Holiday Inn	Bay Col. Prop. W/F Park Hotel	Lidapele	Marrrott	Philopolis	Gund Dunfey	Pattison Can. Pa.
Net Inc. Avail. Ftn.	2,617	2,848	2,009	2,676	Not Avail.	3,028	1,800	3,310
Cap. Val. Net Income	26,600	26,100	75%	28,168	Not Avail.	26,330	17,200	31,524
Loan to Val. Ratio	75%	75%	58.9%	Not Avail.	75.9%	75%	75%	75%
Loan Amount	20,000	20,000	21,300	22,000	Not Avail.	20,000	15,700	21,000
Interest	10%	10%	9.75%	10%	Not Avail.	9.5%	9.5%	9.5%
Term	30	28	20+7 months	28	Not Avail.	25	25	30
Mortgage Constant	10.5	10.66	10.4	10.66	Not Avail.	10.49	10.4	10.168
Equity	6,700	5,000	7,500	2,000	Not Avail.	6,000	5,100	4,000
Net Income After Db.Sv.	517	716	674	331	Not Avail.	600	432	1,168
of Equity	7.7%	14.3%	9.0%	16.6%	Not Avail.	10%	8.5%	29.2%

MEMORANDUM

March 13, 1973

TO: Robert Walsh
FROM: Stewart Forbes
SUBJECT: Waterfront Parcels A-6, A-7
Financial Evaluation of Submissions

In my judgement, based on our exposure to the hotel market and the submissions that have been made on this and other parcels, it is reasonable to assume that a hotel costing between \$60- \$65,000 per room can be financed at this location. Jim Boulger has estimated a total development cost of roughly \$65,000 a room. While it is impossible to say that a more expensive hotel could not be financed, it is fair to say that it will become more difficult as the costs begin to exceed \$70,000.

The critical issue from the financial standpoint is what the submitted costs actually buy in the way of quality design. While most of the submissions contain relatively well defined building specifications, only one backs these specs with a guaranteed maximum price.

Any uncertainty about actual costs necessarily raises questions regarding financial commitments. While there are two particularly strong letters committing to provide a specific level of debt, as well as authenticating sources of equity, only one of these documents the claim that the combined debt and equity can finance the building defined by the design and outline specifications.

Below is the criteria used in evaluating the financial elements of each submission (Exhibit A). A brief summary of each follows along with a concluding assessment of the relative strengths of the supporting documentation (Exhibit B).

Also attached is Joe Berlandi's outline summary of the quantitative data on each proposal (Exhibit C).

/smr

Attachments:

= MARCH '78

BUILDING: HOTEL & CONV CTR
 LOCATION: WATERFRONT
 PROJECT AREA: A-6, A-7

ARCHITECT

R.R.A. PROG. ARCHT: -

JAMES BOULGER.

BUILDING SYSTEMS	ITEM COSTS.	SUB COSTS.	COSTS
	UNITS	\$. S.F.T.	% TOT
HOTEL BUILDING / NCL. GARAGE 233,600 S.F. plus 80,850 S.F.			
FOUNDATIONS	354,450 S.F.	3.37	1,194,496
SUBSTRUCTURE		0.50	177,225
SUPERSTRUCTURE		6.91	2,413,804
EXTERIOR CLOSURE		6.24	2,211,768
ROOFING		5.46	163,047
PARTITIONS		5.02	1,779,339
WALL FINISHES		1.82	645,099
FLOOR FINISHES		1.47	521,041
CEILING FINISHES		1.36	482,052
SPECIALTIES		0.75	265,837
CONVEYING SYSTEMS		1.82	648,640
PLUMBING		4.05	1,435,522
FIRE PROTECTION		0.54	191,403
HVAC		4.83	1,711,993
ELECTRICAL		3.81	1,350,454
GENERAL CONDITIONS	1	2.01	712,444
EQUIPMENT	↓	.94	333,183
GROSS BUILDING COST		45 ⁸⁰ / _{S.F.}	16,237,347
SITE WORK	↓	1.30	460,785
CONSTRUCTION COST			16,698,132
GENERAL DEVELOPMENT COST			
DEVELOPER'S FEE			
LAND COST			
TOTAL DEVELOPMENT COST			

BOSTON REDEVELOPMENT AUTHORITY

City Hall
Room 900, 1 City Hall Square
Boston, Massachusetts 02201

LONG WHARF DEVELOPMENT COST ANALYSIS
MAR. 16, '78

Project And Developer	TOTAL COST.	HOTEL	GARAGE & POOL	ARCHITECT FEES	LAND	OTHER
BOSTON MARKET HOTEL DUNFIES: GRAHAM GUND	\$20,795,500.	\$13,490,800. + \$1,177,200. = \$14,668,000.	+ \$760,000. = \$15,430,000.	+ \$1,200,000.	\$4,167,500.	
LONG WHARF INN WILMER SHOPFEST: CONSULTA	\$21,000,000.	\$14,500,000. + \$14,500,000. = \$15,350,000.	+ \$850,000. = \$15,350,000.	+ \$1,200,000.	\$4,550,000.	
BOSTON HARBOUR HOTEL LIPADELCOPI:	\$23,964,650.	\$14,029,000. + \$1,410,000. = \$15,439,000.	+ \$1,418,050. = \$16,857,050.	+ \$1,000,075.	\$6,036,850.	
MARRIOTT LONG WHARF HOTEL	\$24,503,035.	\$15,060,955. + \$800,000. = \$15,860,000.	+ \$850,040. = \$16,710,000.	\$1,449,650.	\$6,340,515.	
C.P. HOTELS PATTISON ASSOC:	\$25,000,000.	\$13,230,000. + \$1,720,000. = \$14,950,000.	+ \$1,000,000. = \$15,950,000.	\$1,385,000.	\$7,665,000.	
LONG WHARF HOTEL PROLOGUE ASSOC: C.P.T.	\$26,000,000.	\$16,650,000. + \$2,250,000. = \$18,900,000.	+ \$1,100,000. = \$20,000,000.	\$1,000,000.	\$7,250,000.	
BOSTON WATERFRONT HILTON VERIM DEV:	\$26,656,000.	\$16,156,000. + \$0. = \$16,156,000.	+ \$800,000. = \$16,956,000.	\$1,210,000.	\$8,520,000.	
WATERFRONT PARK HOTEL RAY COL. FLOOR: MURKIN ST.	\$29,017,600.	\$19,910,000. + \$142,000. = \$20,052,000.	+ \$1,106,900. = \$21,159,900.	\$1,600,000.	\$6,270,000.	
BOSTON REDEV. AUTH.	\$25,870,000.	\$15,900,000. + \$1,520,000. = \$16,420,000.	+ \$800,000. = \$18,720,000.	\$1,200,000.		

From: J. Baugher
3/2/78

E - 4

LONG WHARF PARCELS A6-A7
'REVIEW' OF MODEL.

RATING	PROJECT & DEVELOPER	USE OF LAND	VIEW ADVANT.	BULK & DESIGN	RELATION TO EXIST BLDG	AESTH.
1 ST	LONG WHARF HOTEL JOHN PHILOPPOULIS ASSOC CHILDS PERLMAN TSEKES & CASEY	Very Good	Excellent	Good	Good	Very G
2 ND	BOSTON WATERFRONT HILTON HOTEL PERINI LAND DEV. SI MINTZ ASSOC, ARCHT	Good	Good	Fair	Fair	Good
3 RD	WATERFRONT PARK HOTEL BAY COLONY PROPERTY CO. HUYGENS & TAPPEN INC. ARCHT	Good	Good	Fair	Fair	Good
4 TH	BOSTON HARBOUR HOTEL LIPADELL CORP. CANTERVALE & McMULLEN	Fair	Good	Fair	Fair	Fair
5 TH	BOSTON HARBOUR HOTEL GRAHAM GUND ASSOC.	Poor	Fair	Fair	Fair	Fair
6 TH	LONG WHARF INN BOSTON PROP. INC & HARRISY/NN COSSUTTA ARCHT	Poor	Fair	Fair	Fair	Poor
7 TH	LONG WHARF MARRIOTT	Fair	Poor	Fair	Poor	Poor
8 TH	C.P. HOTELS PETER E. PATTISON ASSOC SASAKI ASSOC INC. ARCHT	Fair	Poor	Poor	Poor	Poor



F
200 BERKELEY STREET • BOSTON • MASSACHUSETTS 02117
CITY MORTGAGE AND REAL ESTATE DEPARTMENT
FIRST MORTGAGE LOAN COMMITMENT

To Mr. Mortimer Zuckerman
Applicant

Date January 11, 1978

c/o Boston Properties
Loan Correspondent or Broker

No. 513389

133 Federal Street, Boston, Mass. 02110
Address of Loan Correspondent or Broker

Supplement of 4 pages attached

John Hancock Mutual Life Insurance Company, hereinafter sometimes called John Hancock, hereby agrees to make or purchase a loan in the amount and upon the terms and conditions set forth herein, including those on the reverse hereof and, if so indicated above, in the identically numbered supplement attached hereto.

BETWEEN April 1, 1980

AMOUNT: \$ 16,000,000 RATE: 10 % p.a. CLOSING AND June 30, 1980

REPAYABLE IN QUARTERLY
 MONTHLY INSTALLMENTS OF \$ 142,133.33 EACH INCLUDING INTEREST,

WITH ANY UNPAID BALANCE DUE IN 180 MONTHS. Approximate balance \$12,350,000.
(All payments due on first of month. Unless closing on first of month, interest is payable at closing to first of ensuing month and other time computations shall be from latter date.)

PREPAYMENT OPTION: Closed 10 years; open in full in the 11th with a 5% premium.
Summary only. Appropriate language specified by John Hancock to be used in papers.

declining 1% per annum thereafter.

BORROWER(S): Long Wharf Hotel Trust, or Nominee
Parties to execute papers. If individuals, spouses shall sign if required. If a nominee, such nominee shall be subject to John Hancock approval.

REAL ESTATE SECURITY: (General description. Exact description shall be as stated in security instrument(s) with all buildings and improvements to be as indicated by data heretofore submitted to and approved by John Hancock and in accordance with plans and specifications approved or to be approved in writing by John Hancock.)

A parcel of land containing approximately 110,905 s.f. (2.66 acres) of land to be improved by a 10-story hotel containing approximately 390 rooms, a 400 seat meeting room, dining room and coffee shop all to be located on the E/S of New Atlantic Avenue, at Long Wharf, Boston, Suffolk County, Mass.

OTHER SECURITY: RENT ASSIGNMENT (operative in event of default) LEASE ASSIGNMENT(S) (operative in event of default) RENT INSURANCE (for appropriate substitute)

CHATTEL MORTGAGE, SECURITY INTEREST UNDER UNIFORM COMMERCIAL CODE
(for acceptable substitute)

GOOD ONLY IF DUPLICATE COPY OF THIS COMMITMENT IS ACCEPTED IN WRITING BY ABOVE-NAMED APPLICANT AS PROVIDED BELOW AND DELIVERED WITH CASH COMMITMENT FEE OF \$ 160,000* AT OFFICE OF ABOVE-NAMED LOAN CORRESPONDENT OR BROKER BY February 1, 1978

*See Condition Nos. 23 & 24

JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY.

BY John A. Worthen, Vice President
(Title)

TO JOHN HANCOCK MUTUAL LIFE INSURANCE COMPANY AND THE ABOVE-NAMED LOAN CORRESPONDENT OR BROKER

The undersigned hereby accept(s) this commitment and: (1), agrees to be fully bound by the terms and conditions thereof, (2), guarantees to see that the loan contemplated thereby is acquired by John Hancock within the time and on the terms stated or as the time for closing or compliance with any term(s) may be extended by John Hancock or the terms may be modified or amended by John Hancock as herein permitted or hereafter mutually agreed upon, and, (3), covenants that all facts and circumstances pertaining to the application, the loan and the security for the loan are and shall be as represented.

Long Wharf Hotel Trust

Date _____ BY: _____ Title _____

May 12, 1978

David Weiner
General Director
Waterfront Redevelopment Project
Boston Redevelopment Authority
City Hall
Boston, Massachusetts

At the regular monthly meeting of the Boston Waterfront Neighborhood Association on the evening of May 10, 1978, all of the developer proposals for the long wharf hotel were reviewed in detail by the Executive Committee.

Below please find our comments:

1. We strongly feel that the design objectives which led to the height and massing envelope described in the Amendment to the Stipulation and Agreement are as relevant today as they were when the envelope was worked out. The principal reason for adding the parcel A-6 to the development site was to remove mass from A-7, thus opening up the view of the harbour and the historic buildings on long wharf from the Waterfront Park. The Waterfront Park is now in place with the whole focus of the park oriented toward parcel A-7.

The design envelope previously worked out with the BRA anticipated these points by limiting building height on the first 25 feet back from the northern (cove) edge of A-7 to 4 feet above grade. Building height on the next 20 feet back from the northern edge is limited by the envelope to 15 feet. The reason for these controls is to provide maximum integration with the park and not to impose on the great cove.

The design envelope purposely allows a 135 foot height on the south portion of A-6 to allow massing of the hotel back by the telephone building (generally considered unsightly) from the Park. Height on the north portion of A-6 is deliberately limited by the envelope in order to avoid a "left field wall" effect against the Park and to minimize shadows cast on the park.

Page Two
David Weiner

The BWNA cannot support or accept any design which violates these essential considerations. We consider 3 of the 3 proposals to be in gross violation; Holiday Inn, Dunfeys, and Philopolis 57. We could not accept any of these proposals without fundamental design revisions. The "dog leg" of the Bay Colony proposal and the excessive height on the north portion of A-7 in the Bay Colony and the Lidapel proposals are also unacceptable without significant design revisions.

2. We have prepared a rating system score sheet to quantify our reaction to all aspects of each proposal. The score sheet with our ratings is attached. On an overall basis, Perini Hilton is clearly the highest rated proposal. Other high rated proposals are Marriott, Canadian Pacific, and Lidapel.
3. Regardless of which developer is chosen, there will have to be considerable design review in the process of finalizing rooflines, facade materials, details of public uses, restaurants, parking, and traffic patterns. Hopefully the final design of the chosen developer will incorporate the best features of all the proposals.

For example, we like the treatment of facade and roofline put forth in the Bay Colony proposal. We also liked the restaurant design in the Canadian Pacific proposal. We find Perini to have the best treatment of traffic patterns.

In order for the design review process to proceed positively, it is essential that the community have confidence that the architect and that the developer will be responsive to constructive input. Accordingly, we have included a line in the rating sheet to reflect this aspect.

Again, Perini-Hilton scores an excellent rating based on our past dealings with the architect in other Waterfront projects. Canadian Pacific also scores excellent because of the superb interaction that took place between the community and that architect on the Waterfront Park design.

We have had a fairly good relationship with Lidapel on Waterfront projects.

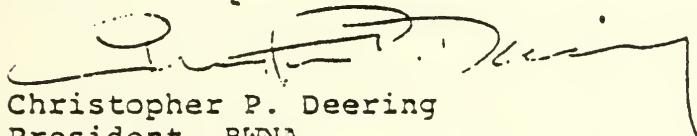
There would be some confidence in the Dunfey Group provided that they were willing to undertake fundamental changes in their plan as discussed in point #1.

As for the other proposed developers, we have no way of knowing how they would be to work with, and thus we are reluctant to score them on this important factor.

Page Three
David Weiner

4. We wish to express appreciation for the openness and objectivity of the developer selection process to date on this absolutely key development. We trust that the concept of the design envelope worked out over many months will be observed, particularly with respect to height controls on the various portions of parcel A-7. We look forward to a well reasoned decision by the city on who the developer will be, and the design review process where the five points can be worked out in a spirit of positive cooperation.

Regards,



Christopher P. Deering
President BWNA
63 Atlantic Avenue
Boston, Massachusetts 02110

CPD:nmh

CC: Joseph Berlandi
Director: Non-Residential
Development

Robert Walsh
Director: BRA



Interventions

1 = Least (land)

LONG WHARF WALK OUTLINE

6 - 4

	BAY CUT	PERIOD	CAN PASS	PROJECTION	DURABILITY	MANUFACTURER	UNIQUENESS	UNDESIRABLE	1 = LEAST (land)
① How does the building(s) integrate with the Waterfront Park and the walk to the sea	2.5	4.5	4.5	2	2	4.5	2.5	2.5	
② What impact is there on shadows in the park and walk to the sea	2.5	4.5	1	2	3	4.5	2	4	
General appearance & opening of pedestrian easement along old Atlantic Avenue	3.5	1.5	4	1	11.5	3.5	2.5	4.5	
③ Availability & use of waterfront edge along Long Wharf & the Great Cove	4.0	4.5	3.5	2	2	4.5	3.5	3	
View down Richard St. to the Gardner Ctrwy. & on to the Long Wharf slip and the harbor	2.5	4.5	4.5	1	1	4.5	4.5	3	
④ Vehicular interference w/pedestrian activity on Long Wharf & around the pier/wharf	2.5	4.5	3	2	3	3	3	4	
⑤ Openness & uses of ground floor in relation to public benefit	3	4.5	3	3.5	3	3	4	3	
⑥ Public uses on other floors being reflected on the exterior of the hotel	1	4	3	3	3	3	3.5	3	
Type of clientele the hotel is likely to attract (groups, etc.) & the impact on residential life	3	3	3	3	3	3	3	3	
⑦ Scale of hotel in relation to surrounding areas & adjacent buildings	4	4	3	1	2.5	4	2.5	4.5	
How does the hotel gear its services (restaurants, etc.) between room guests & the general public & what is effect on neighborhood	1	4	3	3	2	2	4	1	2
⑧ How close does the hotel core to nesting the design envelope work in with the community	2	5	3	1	1	4	1	1	
TOTAL	37.5	50.5	41.5	21.5	30.0	43.5	36.0	44.5	
PERCENT	5	7	3	5	7	5	6	7	

H
INTER-OFFICE COMMUNICATION

TO Robert Walsh
FROM Dave Weiner *Dave*
DATE April 25, 1978
SUBJECT Waterfront Project - Long Wharf Hotel

If you are still so inclined, I will set up a meeting with the North End and Waterfront Residents groups to review the proposals for the Long Wharf Hotel. As previously discussed, I would recommend a joint meeting at which time our design staff could review the eight architectural submissions in detail.

While I think it is refreshing to review this material with the folks, you should be aware of the following possibilities:

1. North End picks one design
2. Waterfront picks another
3. BRA staff picks still another

Aside from the confusion, no major problem unless we try to pick one that did not follow the design criteria to the letter. The Waterfront group will be committed to fight to the bitter end to defend the standards they work so hard to establish.

Please advise.

cc: R. Garver
E. Lonergan

Garver
ML

RECEIVED

APR 26 1978

BOSTON REDEVELOPMENT AUTHORITY
OFFICE OF THE DIRECTOR

I

F.W.

PERINI

LAND & DEVELOPMENT COMPANY

73 MT. WAYNE AVENUE FRAMINGHAM, MASSACHUSETTS 01701 (617) 875-6171

THOMAS A. STEELE
PRESIDENT
CHIEF EXECUTIVE OFFICER

30 August 1978

Mr. Robert Farrell
Chairman of the Board
Boston Redevelopment Authority
City Hall
1 City Hall Square
Boston, Massachusetts 02201

Re: Waterfront Hotel Project

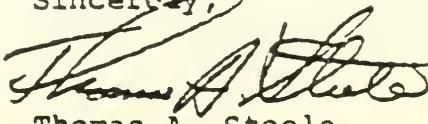
Dear Mr. Farrell:

According to the papers (David Rogers-Boston Globe 3/27/78), Joe Berlandi has arranged meetings between the Waterfront Residents Association (WRA) and Zuckerman's architect, Cossutta. As a result of these meetings, Cossuta is being given a chance to redesign his proposal to meet WRA objections. While I would question the propriety of these meetings prior to the tentative designation of a developer by the BRA, I can only presume that the BRA intends to give all of the developers a chance to make presentations to this same audience.

We are aware of the pressures that have been brought to bear on you, the BRA board, and the staff relative to this project, and have been reluctant to further complicate the issue until there was some definitive action. It now appears you have embarked on a course of sponsoring discussions between the community and a specific developer to the possible detriment of those of us who have not been afforded the same opportunity. In view of the fact that we have been rated #1 by your staff, as well as by the WRA, we respectfully request equal opportunity to present our case to this group under your sponsorship. In addition, we would be pleased to meet with any member(s) of your staff, the board, (or anyone else you might feel appropriate) whenever and wherever you specify.

We want to go on record in letting you know that we are keenly interested in recent developments with respect to this project, and are concerned that the integrity and equity inherent in an open competition are in danger of being seriously compromised by recent BRA actions. If this is allowed to continue, the adverse implications and repercussions will transcend the importance of this particular project. Let's return some equity to the process.

Sincerely,


Thomas A. Steele

cc: Robert Ryan
Joseph Berlandi
David Perini

Excerpt from Joseph Walsh Hearing

Q Did Mr. Walsh, prior to that resignation, any time prior to the resignation ever discuss that matter with you - any difference he had with the mayor or -?

A Only once, only once to my memory. Let me just think about it and make sure. I can't be sure that I wasn't in an informal group somewhere where the business of Bob Walsh's disagreement with the mayor came up and there was some exchange concerning us but it wasn't with any members of the board. It was possible down in the market, but my first personal discussion with Bob Walsh concerning the resignation took place on the day he tended the resignation at the board meeting. He had called me I believe on that day or maybe the day before and I was on trial somewhere, I called him back and missed him and then went to the board meeting and he called me at the office where we meet before the board meeting.

Q On the telephone, he called you?

A Yes, from his office and asked if he could talk with me so I said sure and went down to his office. Do you want me to give you the conversation?

Q Yes.

A I went into his office and I asked him what was going on with reference to the proposed resignation and of course the background I had gathered as I say from the press and possibly an informal exchange here and there. He didn't go into detail concerning the difference he had with the mayor other than to say that the difference was irreconcilable and that he felt that he had no choice but to resign.

Q He didn't tell you what the difference was?

A Oh yes, that they were in - that they had a disagreement as to the designation of the developer.

Q Did he tell you who the mayor favored?

A Well, that had been in the papers for weeks and everybody knew that the mayor was favoring Zuckerman and whether there was a reference made to Zuckerman - the mayor's preference at that time I can't be sure. It's quite possible but we both knew what the subject was and I didn't want to see him resign if it was possible to avoid it and I asked him if it weren't possible to avoid it in some way and he couldn't see how it could be avoided because he was very firm in his position and apparently the mayor, well, I'm indulging in speculation, but from what he told me, he was firm and wasn't about to change his position and then we got into a discussion about the acceptability to him of alternatives providing for his remaining with the authority in some capacity and I don't know whether I'm going afield here -

Q No, we'd like to hear.

Q No, this is fine.

A And he said that he wanted to remain the director and I believe he said till the end of this calendar year and it seemed to me that this could be an awkward situation but I had an open mind about it because I thought that Walsh was a good man,

confident and thought it would be good if he could stay on and contribute to the progress of such things as a Lafayette Mall and so on because he was deeply involved in that, of course, as you know as well as the waterfront, but he would not remain on as a consultant which was one of the suggestions that was made.

Incidentally, while I was involved in this discussion with Bob, Bob Farrell came in and Bob Farrell then got involved in the discussion as to the possibility of him being a consultant rather than staying on as the director and so on. Bob Walsh said that he didn't want to stay on as a consultant, he wanted to stay on as the director but he would agree to remain as the director for three months. He wanted at first to remain until the end of the year, then he said well, why don't we make it until October and I'm going to submit my resignation at the meeting. Well, this was really not acceptable because he was in sort of a gray area as director and there would be problems presented we couldn't even get a handle on the problems that might be presented because of a director being in a tangent posture for that period of time and so when he submitted the resignation, at the meeting, this was in substance all that took place in his office as I recall - and then when he submitted the resignation at the meeting, let me see what happened - Colbert presented a motion to terminate - what the exact couching of that motion was, or the terms in the motion, I can't recall, but it was to terminate him rather than accept the resignation with the conditions which Walsh imposed. The resignation would have been acceptable without the condition that he remain as director for the three month period. I think that everybody was prepared to make some kind of an arrangement for him to stay until the end of the year if it could be in a capacity which made some sense, but he was set to resign, that was going to happen, the question was if it was possible to work out some kind of an acceptable continuation of his services and there was just no meeting of the minds, he was adamant and he wanted it his way so he was terminated.

Q Was there any discussion before the board meeting between members of - you and other members of the board about how you were going to handle it after you had met with Bob Walsh and talked to him about the problem?

A After we had met with Bob?

Q After you had come out of that meeting with Bob Walsh by yourself or Mr. Farrell and you, did you sit down and talk with Mr. Farrell or any other board members or anybody about how you were going to handle this problem at the meeting?

A I think that because of the time problem we didn't get back into any conclave so to speak, of the board or - no - what happened was we came directly from Bob's office to the meeting - Bob I recall quite clearly proceeding us into the board room but I don't think we went into any - or had any conference, except possibly Colbert saying that he was going to make a motion if the consultant business didn't work out. He was going to make a motion because the resignation of the terms which Bob Walsh wanted to dictate was not acceptable. That would be it to my memory. Then we went into the meeting. There was no -

Q There was no discussion of that really?

A Pardon me?

Q When he said that he might make a motion to terminate him effective tomorrow, or soon thereafter, there was no discussion about it from the other board members on the way to the meeting?

A No there wasn't any discussion to my memory...

K

Excerpt from the Testimony of James Flaherty

Q Was there any conclusion reached as to why he was resigning?

A No, there was a disagreement between him and the mayor and the mayor is the chief executive of the City of Boston and he has a right to make a decision as to who he wants to run his departments. He's got to answer to the people of Boston, not the department heads.

Q Was it your understanding that Mr. Walsh was a department head?

A Sure he was a department head.

Q And that the BRA is a department of the mayor's office?

A The BRA is a department of the mayor's office. Sure.

Q And it's run like any other department?

A Yes.

Q And if the mayor wants to fire the head of that department, he has a right to?

A Absolutely, I believe that.

Q Wait, let's backtrack for one second to the meeting on which the decision was made to have Mr. Walsh resign a little bit earlier than he had anticipated. In other words, to fire him beginning the following day. Were you aware that Mr. - I believe it was Mr. Colbert who raised that motion, is that right?

A Yes.

Q Were you aware that he was going to do that before the meeting?

A On the termination of Mr. Walsh?

Q Yes.

A Yes.

Q Did you vote in favor of that?

A Yes I did.

Q Why?

A Because I felt that due to the conflict between the Mayor and Mr. Walsh it would serve no purpose for him to no longer stay on as Director of the Authority.

Q When, prior to the meeting, did you know that Mr. Colbert was going to make that motion?

A When we got to the meeting?

Q When was that?

A I usually get there a half hour before, it was either one-thirty or two-thirty, I don't know if it was a two o'clock meeting or a two-thirty meeting.

Q So this hadn't been discussed with you prior to your arrival at the BRA?

A No.

Q Would you say that you communicated fairly well with Mr. Walsh before that and you had a good relationship with him?

A Bob Walsh, yes absolutely.

Q Did you respect him?

A Absolutely.

Q Did you think he was a good director?

A I think he did a good job as director, yes.

Q Did you raise any questions or initiate any discussion at the board meeting once this motion had been raised?

A No.

Q Why not?

A I voted for it and I think after that we tabled everything and we left.

Q It seems to me that I would - if I had a good relationship with my, with a director--

A It wasn't a very pleasant day, let me tell you that. Bob Walsh is a good guy. I thought he did a good job, however, again, Kevin White is the mayor of the City of Boston and he's the Chief Executive and he's answerable to the people of Boston and if there were going to be a con-going conflict between him and the mayor absolutely nothing would have been accomplished on the ninth floor, in my opinion. So I felt it best that they part ways and let it go at that.

L

Excerpt from the Testimony of James Colbert

Q There was a discussion or a conference of some sort at the Parkman House.

A That wasn't really a conference on the hotel proposal.

Q It was a discussion, let's call it.

A The hotel proposal was not discussed as I recall it.

Q Would you please tell me what was discussed and how you happened to have been there?

A Yes. I received a call from somebody in the mayor's office asking me if I would come to the Parkman House to see the mayor at 5 o'clock on a certain day, I don't remember the day. The mayor had asked me if I would sit down with him while he - and listen to him give the arguments in favor of the classification amendment so that I could write something on it, so that when they called me at that particular time, I thought that they were calling me to go in and sit down with him on the classification amendment. Now did you want to ask me something?

Q No, go ahead.

A And I went in and I went to the back room on the second floor of the Parkman House and I sat down and within maybe 10 minutes Mr. Farrell, the Chairman, Mr. Flaherty and Mr. Robert Walsh, the then director, came in and sat down and I was a bit surprised because I thought I was meeting with the mayor on something else, and they - maybe 10 minutes after that the mayor came in and the mayor told us in substance-there wasn't any discussion in the sense, I never said anything, I just listened and that's what most of the other members of the board did. Mr. - Mayor White told us that he had been having problems with Mr. Walsh and that Mr. Walsh was going to resign and I was surprised. That was the first time I knew there were any problems or that Mr. Walsh intended to resign. Mr. Walsh lives near me and I know him fairly well and I know his family. The only thing I said to him, I told him, 'are you sure Bob you're not making a mistake resigning?' And I don't remember what he said but that was about the sense of it.

Q Okay.

A There was no mention of the hotel proposals at that time.

Q Okay, let's just take this a little bit slowly. Before that meeting occurred there had been a lot of discussion in the press and, perhaps it was rumor or whatever it was that there was conflict between the mayor and the director about the designation of a developer for the hotel.

A If there was I didn't see it. I was away on vacation just before that meeting and I read the papers rather carefully although they weren't the Boston editions of the papers. I didn't know of any conflict between Mr. Walsh and Mayor White until I went to the Parkman House for that meeting in, I would say early July.

Q Did the mayor say why Mr. Walsh was resigning?

A I don't recall that he did.

Q Did he just say, 'Bob is resigning,' and everybody went home?

A No.

Q What happened?

A He said Bob Walsh was resigning. He said there had been a conflict between Bob Walsh and me. He said he was the mayor and that he felt when he made a recommendation that somebody should give some weight to it, and at one point he said to Mr. Farrell, the Chairman, 'you recommended him' meaning Bob Walsh and Bob Walsh didn't say anything and I said to the mayor, 'I recommended him too' and I tried to see if I could smooth it down by talking to Mr. Walsh and I couldn't and that meeting only lasted maybe 20 minutes.

Q You said that the mayor said that Bob Walsh was resigning because of a conflict...

A Yes, because of problems, yes.

Q I didn't get to ask my question. Did he say what the conflict was?

A I don't recall he did, no.

Q You said the mayor said when he makes a recommendation, it should be given some weight?

A Yes, I said something like that.

Q What recommendation was he talking about?

A I don't know.

Q He didn't mention what the recommendation was?

A No.

Q No one asked?

A I didn't ask. I don't know, I don't think so, no, not to my recollection.

Q Well when, it seems when the Director of the Authority is prepared to resign over a conflict between himself and the mayor, I would think that one of the board members would be curious enough to ask why or what the conflict was.

A Well it subsequently developed that there was a conflict over the hotel proposal but that wasn't stated at that particular meeting.

Q Did nobody at the meeting ask what the conflict was?

A I don't think anybody at the meeting except the mayor and Robert Walsh did anything but listen. That's all I did except talk to Bob or speak to Walsh.

Q Are you saying that when you left the Parkman Center that day, you still did not know what the conflict was between the mayor and Mr. Walsh?

A That's right.

Q And you did not know what they disagreed about?

A Not specifically, no.

Q We have heard testimony under oath that has told us that it was stated at that meeting that there was a disagreement over the developer for the hotel and who ought to be selected. You don't recall anything of that nature?

A I think my recollection is that there was a little, - there was some slight discussion as I recall it, over the evaluation process.

Q Do you want to tell us about that discussion, what was said?

A I don't remember too much about it to tell you the truth. In a general sort of a way I gained the impression that the mayor did not feel that there had been a fair and accurate evaluation, an opinion with which I subsequently concurred.

Q So, in fact, the Waterfront Hotel Project was discussed at that meeting?

A It was referred to let's say by the mayor. It was not discussed by any of the board members. It wasn't really a discussion. At this conference the mayor had some things to say and he was about the only one that had any things to say.

Q Did you understand that the conflict was about the evaluation process for the hotel?

A I gained that impression generally. I was a bit confused to tell you the truth.

Q Okay, well about two minutes ago you testified that when you walked out of the meeting you had no idea what the conflict was. Now you're saying that you had an idea that the conflict was about the Waterfront Hotel.

A Yes, I, to an extent.

Q To an extent what?

A Well, to an extent I think the mayor was dissatisfied with the way they had arrived at their evaluation. I had not seen their evaluation at that time and I wasn't quite one hundred per cent sure what they were talking about.

Q Are you saying that the mayor was dissatisfied with the process of selection or the mayor was dissatisfied with the-

A Process of evaluation.

Q What did he say that led you to believe that?

A I don't recall. I just have a general impression.

Q But you don't recall him saying anything specifically?

A I recall him saying that he was going to confer with an outside architect on the matter.

Q Did you have any idea, prior to the meeting at the Parkman House, that the mayor had a personal preference?

A No.

Q You had read no articles in magazines, newspapers or heard no reports on the radio or the television as to whether the mayor had a personal preference?

A No, I had been away on vacation just before that time.

Q Did you learn subsequently what the conflict was between Robert Walsh and Mayor White?

A It was my impression, I gained the impression subsequently that the mayor felt that there had not been an accurate and fair evaluation of the hotel proposals.

Q Let me rephrase my question. Did you subsequently learn that the mayor had a personal preference as to a developer for the site?

A When he came before the board and testified at a public meeting it appeared to me that he was recommending Mr. Zuckerman.

Q Did you have any knowledge or impression prior to the mayor's presentation for the BRA that Mayor White had a personal preference?

A No sir-

Q None whatsoever?

A No sir.

Q Do you get a paper delivered to the cottage?

A No I have to go get it. I called the Globe to see if I could get it delivered but I couldn't. I did not get...When I could, I would get a ride over to the General Store and buy the papers.

Q Would you say that you did that daily?

A Pretty much. If I didn't go, somebody else would...

Q Could you tell us, to the best of your memory what happened if anything, at that meeting?

A Was this the meeting at which we discharged... I think on July 20, we relieved Robert Walsh of his duties on my motion.

Q Were you at the Boston Redevelopment Authority on the day of the meeting prior to the meeting?

A Say that again.

Q On the day of July 20th, let's say the morning, were you at the Boston Redevelopment Authority on the morning of July 20th?

A No, I would have been there about one o'clock.

Q What happened when you arrived at one o'clock?

A I went into my office.

Q Where is your office?

A Room 914. It's an office that's shared by me and Mr. Farrell and Mr. Walsh.

Q Only the three of you?

A Well there's a second office, too, that they use, that's occupied by somebody else except on the days of the board meetings.

Q Okay, when you went into your office at one o'clock, do you recall what you did?

A I signed some checks first.

Q And then?

A Then I think sometime subsequent to that, Mr. Farrell came into the room and he told me that Mr. Walsh was going to resign. Is that what you have in mind?

Q Yes it is.

A Does that answer your question?

Q Yes, is that, so now you knew that Mr. Walsh was going to resign. You knew the reason why Mr. Walsh was going to resign?

A Mr. Farrell didn't say why, he just said he was going to resign.

Q Could you speculate as to why?

A Well I, by that time I knew that he was having problems with the mayor, that he and the mayor were not getting along.

* That answer, you know, can you speculate, that's a little broad.

Q Okay, but it seems to me that at that point he would have known why Mr. Walsh was going to resign, did you know at that point why Walsh was going to resign?

A Because of the, because he and the mayor were having problems.

Q Is that the first you heard of Mr. Walsh's resignation, besides the time at the Parkman Center?

A Yes.

Q Did you talk to the mayor at any time between the meeting at the Parkman Center and July 20th?

A I don't think so, no.

Q Do you know if Mr. Farrell did?

A I don't know.

Q Do you know if any of the other board members did?

A I don't no. Talked to the mayor?

Q Yes.

A I don't know. I did not.

Q Did you talk to him on July 20th?

A The mayor?

Q The mayor.

A No, not that I recall.

Q Do you know if Mr. Farrell talked to him on July 20th?

A I don't know.

Q How did Mr. Farrell know that Mr. Walsh was going to resign?

A He had been down and talked to Mr. Walsh, he said. When he came in he said he had gone down to talk to Mr. Walsh and Mr. Walsh told him that he was going to resign and I said to - do you want me to go on?

Q Yes please.

A I said to Mr. Farrell, 'he's going to resign when?' And he said, 'he wants to continue for another three months' and I said, 'I would not go along with that, I don't believe in "lame duck directors".' I believe that when somebody submits a resignation, they should not continue to perform, I think that they start things that they're not there to finish and it's not a healthy situation and it's not a situation that's in the public interest and I said, 'I'm willing to treat Mr. Walsh liberally in the matter of continuing payments to him but I would not agree to let him resign, I think he wanted to resign November 1, effective, and I thought that would be a mistake.'

Q If he had not submitted a resignation that day-

A What's that?

Q If Mr. Walsh had not submitted his resignation that day, then you would just not have dealt with the matter? You didn't want him to be a "lame duck director"?

A That's right.

Q So if he had offered to resign, you know, gave you his letter in November, you would have just let him go on until November?

A I don't understand your question.

Q Would you have fired him that day had he not submitted his resignation effective November?

A I don't think so.

Q Excuse me, Mr. Colbert. Your testimony conflicts with testimony we've heard about this. So could you think very carefully and repeat who initiated the action that took place at the board meeting? Was it really that Mr. Walsh was going to resign and therefore then the board moved to terminate him or was it that the board moved to terminate him so Mr. Walsh-

A Now we're talking about the board meeting itself, right?

Q I'm talking about the action before the board meeting.

A Prior to the board meeting?

Q Yes.

A I told you that Mr. Farrell came into room 914, where I was sitting at a desk and he said to me, 'Bob Farrell is going to resign this afternoon-' I mean Bob Walsh is going to resign this afternoon, and I said, 'effective when' and he said I think he said, 'effective November 1,' and I said, 'that's not acceptable to me, I wouldn't go along with that. I don't believe that we should have a lame duck director for three months. I believe it would be a mistake.'



If he's going to get through, let him get through. If he submits a resignation today, let him get through today or tomorrow.' We went into the meeting and almost at the start of the meeting, - we may have - I think we may have approved the minutes of the previous meeting and approved bills for payment, but very early in the meeting Mr. Walsh submitted a resignation effective November 1. This is my recollection. And when he did, I made a motion that his resignation be taken under advisement and Mr. Walsh, as I recall it, said, 'what does that mean?' and Mr. Farrell replied to him, 'that means he's moving that your recommendation be taken under advisement.' Somebody else seconded my motion and it was voted to take his resignation under advisement. I'm not sure but I think Mr. Cofield dissented from the vote. I think the vote was four to one, it might have been five to nothing. I then moved that Mr. Walsh, this is to the best of my recollection, be relieved of his duties effective at five p.m. the following day, that he was to leave the staff automobile that he used to drive back and forth in the City Hall garage and that his compensation was to continue until December, through December 31, 1978. He had sought three month's pay and sought to remain on the job for three months. I did not object to giving him three month's pay. As a matter of fact I had moved to give him five month's pay. I had not discussed this with anybody and I, that night or the next morning, I heard Mayor White speaking on television and he apparently did not fully approve of the five months. That was strictly my idea and I didn't discuss it with the other members until I introduced it.

Q Do you normally discuss things with the other members before you introduce it?

A Before I introduce it, not necessarily, no.

Q Alright, what you say about the board meeting and what transpired at the board meeting is consistent with things that we've heard before, but what you say about what transpired before the board meeting is not consistent. So could you please just take a moment to think and if you want, either repeat anything or clarify anything that you think -

A Well what isn't consistent, could you explain.

Q Which part of the meeting?

Q The meeting, what has been said about what transpired at the meeting is consistent. What is not consistent is what occurred before the board meeting.

* Why don't you tell him what's inconsistent with his statement and what you have heard from others.

Q Well generally it's our understanding that the BRA director decided to resign after he learned that he was going to be terminated. We also understand that there were several conversations, well I'll say that there was at least one conversation between the chairman of the Authority and the mayor on the day of that meeting.

A Could be, I would-

* Could be, how would he know that?



A I wasn't there if there was. I don't know.

Q That's what we're asking.

* Well I think he's already answered that he didn't know.

A I don't know whether there was or there wasn't. One thing I would elaborate on, that I didn't say that I would elaborate on, after Mr. Farrell told me that Mr. Walsh was going to resign, I roughed out some notes and had the secretary of the board make me about a dozen copies, with the provisions in it that I felt should apply to Mr. Walsh's resignation, and I did that after Mr. Farrell told me that Mr. Walsh was going to resign.

Q Before the meeting you were planning to present a motion to terminate Mr. Walsh if he should resign, right?

A Well, I just-

Q Prior to the meeting, these notes that you roughed out and had the secretary type up, they were notes relating to a motion to terminate Mr. Walsh?

A There was a motion to terminate Mr. Walsh after Mr., the Chairman, Mr. Farrell, told me that Mr. Walsh was going to resign but wanted to make his resignation effective three months and wanted to stay on the job and didn't want to just be doing nothing for three months. I did not agree with that.

Q Did other members of the board know that you were planning to make this motion?

A I believe that Mr. Flaherty came into the room while I was talking to the board secretary, she couldn't read some of my writing, and I think Mr. Flaherty knew, I'm not sure whether Mr. Walsh did or not. I don't remember whether he came in prior to that time.

Q Where were you, for the ten minutes prior to that meeting, where were you?

A Before the actual board meeting?

Q Yes.

A In room 914.

Q Was anybody there with you?

A Of the ten minutes before?

Q For the five minutes before.

A When the board members get there, I usually get there first and when the other board members come they usually come into 914.

Q And when do they usually come in relation to when the meeting is?



- A They straggle in in the last fifteen minutes. I come in early and sign checks and do any, perform any business that involves me if somebody has written a letter to me, I dictate an answer or something like that.
- Q So the other board members straggle in sometime fifteen minutes before the board meeting or within fifteen minutes?
- A Fifteen, ten, yes, Mr. Flaherty, I get there first, Mr. Flaherty usually gets there second and Mr. Farrell and Mr. Walsh and Mr. Cofield usually get there a few minutes before the meeting.
- Q And what happens in the few minutes before the meeting?
- A What happened?
- Q Generally.
- A In that office?
- Q Yes.
- A Nothing I think there was just small talk as I recall it.
- Q Is the door open to the office during these ten minutes?
- A Yes, yes.
- Q Is anybody else usually in that office?
- A Mr. Simonian sometimes comes in and Mr. Walsh used to come in before the meeting.
- Q Why do you suppose Mr. Simonian and Mr. Walsh would come into a meeting that is, come into a room that is-
- * This wasn't a meeting.
- Q Why do you suppose that those two people would come into an office that is designated for board members?
- A I didn't say Mr. Walsh came in that day, he did not.
- Q Not that day, under general terms, generally?
- A He'd come in to say hello and get any problems with today's agenda.
- Q What kind of problems?
- A The agenda?
- Q Yes.
- A There might be a promotion of somebody that I thought wasn't justified or might be a recommendation on a contract where there was a complaint of a flawed bid or something like that.

- Q Okay, well let's just talk about in one instance. Can you recall some kind of a discourse about an instance like that. I mean would you—
- * Aren't we getting a little afield from the scope of this subpoena?
- Q No I don't think so.
- * You're talking about the development of the Waterfront parcel and this interrogation is restricted to that and now we're getting kind of general. Are you indicating you think there's some kind of violation of the public meeting law and is that the purpose of this question?
- Q Well, that might be one conclusion that somebody could draw from it.
- * Well I think you're going well beyond the scope of this subpoena when you ask a general question like that.
- Q Alright well then let's limit our discussion then to the discussion of the Waterfront Hotel. And let's talk about whatever discussion occurred prior to the board meeting at which time Mr. Walsh was terminated. In the five or ten minutes that you met in the office that is designated for board members did anybody discuss anything that has to do with the termination of Bob Walsh?
- A Mr. Farrell did.
- Q And what did he say?
- A He said Mr. Walsh was going to resign at that meeting.
- Q And did anybody respond?
- A Did anybody what?
- Q Respond?
- A I did.
- Q What did you say?
- A I said, 'effective when.'
- Q And then he said—
- A He said, 'November 1.'
-
- Q After you heard Mr. Farrell say that Mr. Walsh was going to resign, is it then that you decided to write a motion to terminate him?
- A Yes, then that I wrote the motion.
- Q Did you respond to Mr. Farrell in any way?



A Mr. Farrell told me 'Bob Walsh is going to resign at this afternoon's meeting' and I said 'effective when' and he said, 'November 1' I believe and I said, 'that's not satisfactory to me. I don't believe in lame duck directors' and he said my recollection is he said 'we ought to give him some compensation' and I said 'that's no problem with me.'

Q Who else was in that room at the time?

A I'm not sure anybody else was in there except Mr. Farrell and me.

Q Who was the first one of the two of you to leave that room?

* After that conversation?

Q After that conversation.

A I don't remember.

Q Did any of the other board members come into the room after that conversation?

A I think they all did.

Q And what happened when they all came in? Was there any discussion?

A No. Mr. Flaherty may have been in and out of the room while Mr. Farrell was there, I'm not sure and Mr. Walsh may have too, but they, Mr. Flaherty usually gets there about a half an hour before the meeting and then goes into the adjoining room. There's a woman who works in there and we kick her out on board meetings so that somebody can, they can use that office and make telephone calls or get telephone calls and they come in my office and then remember they have to make a call and go back into the other office and they come in and out.

Q You said that all the board members were in room 914 at one point, right?

A Yes.

Q How long did everybody remain in there together?

A Two or three minutes.

Q And there was no discussion whatsoever?

A Well, I might have said - usually I say to Mr. Farrell, let's get the meeting started, it's almost two-thirty or it's almost two o'clock and he finishes signing, countersigning the checks that I've signed and that's usually about the only conversation.

Q So you had three minutes there and the conversation was let's get the meeting started and that took the remainder of the time to just sit there in silence?



- * Well he said he was signing checks and Mr. Farrell was-
- Q Well I want to find out what the discussion was that was going on after the signing of the checks.
- A I don't think there was any real discussion. I don't think there was any discussion of any kind. I don't recall any discussion.
- Q You had just finished writing a motion to terminate the director of the Boston Redevelopment Authority?
- A Yes.
- Q You didn't tell any of that to anybody?
- A I don't recall that I did, I may have, but I don't recall that I did.
- Q So far as you're concerned, the only person who knew about your motion when you went into the board meeting was Bob Farrell?
- A Uh-
- Q I'm going to call the other witnesses back to testify.
- A Yes, uh, Flaherty may have known and Walsh might have known. I don't particularly pay attention to who's walking in and out.
- Q How would they have known?
- A In advance?
- Q Yes.
- * I think he already testified that a couple of them come in while he might have been dictating this to the secretary. He's already testified.
- Q Well, I don't know that he said that.
- * That's my recollection.
- A I said that I was trying to tell her what was in the thing I had written out.
- Q Did you read the whole order to the secretary?
- A That thing was about five lines.
- Q So when all the board members were in that room-
- A If I wrote something and she couldn't understand it, she'd say to me, what's that say and I'd say 'that says whatever I meant to have it say.'
- Q Alright well let's go on from that meeting.
- A I don't care who you've called by the way, I have no interest in, call anybody you want.



Q Okay.

A I'm telling you the truth to the best of my recollection and if you don't like it, I'm sorry.

Q When was the next time you had any involvement with the project?

A I think at a subsequent meeting either the next meeting or the second meeting Mayor White came in, Mayor White arranged to appear before the board and he came in and we heard him at the start of the meeting and he testified and had a - John Sloan was with him and I think an architect with whom he had consulted. I believe his name was Blake. I don't recall every little detail but the mayor was there and the mayor testified.

Q What did the mayor say?

A Well, as I recall it, he recommended the Zuckerman proposal.

Q Okay, did you ever read an evaluation that was done by Blake?

A By Blake?

Q Yes.

A I think he - Did I read it?

Q Yes

A I don't know if I read it but I listened to him tell his evaluation and he, his evaluation, as I recall it, was Zuckerman and Dunfey, that's my recollection.

Q In that order?

A I'm not sure what order it was in.

Q In other words, did Mr. Blake express a preference?

A I'm not sure.

Q I don't recall that Mr. Blake spoke at the meeting, it may be that I am not remembering correctly.

A When the mayor was there?

Q Yes. I think John Sloan and the mayor spoke but I don't -

A Well he had somebody there with him. There were three people that spoke at that meeting and then we questioned some of the people in the audience. Now Mr. Blake may have rated Dunfey first. I was not too impressed with the rating on the Parker House proposal because Mr. Sloan had been appointed when Mr. Kenney was director, and I believe this thing would show that he was also promoted by Mr. Kenney and it seemed to me that they could be making a recommendation. Mr. Kenney was working as consultant for the Dunfey people and I was a little uneasy about their recommendation.

Q Is that why you weren't impressed with the Dunfey proposal?

A I didn't say I wasn't impressed by it. I think all eight of the proposals were pretty good. It didn't seem to me to be the best one, or one of the best.

Q Well, a minute ago you did say that you weren't impressed by it because Mr. Sloan had been appointed by Mr. Kenney. Did that appointment have anything to do with your opinion of the Dunfey proposal?

* I think he said promoted by Kenney, I don't think he said appointed, did he?

Q Excuse me, promoted.

* Did he say appointed, I thought he said promoted?

A He was, well of course he was appointed and promoted by the board, but he came to work through Kenney and Kenney recommended - there are the papers I have. If you want the exact dates, I'll get them. Kenney was the director and Kenney recommended that we appoint Sloan to a job in the Planning Department. Subsequently, both Kenney and Walsh made recommendations for promotions for Mr. Sloan, and Walsh recommended that he be made head of the design review section.

Q Okay, but you said that you were not impressed with the Dunfey proposal because of the appointment.?

A Well, impressed may be the wrong word. I was uneasy about the evaluation by the planning staff of - largely by Mr. Sloan - of the Dunfey proposal because Mr. Kenney was a consultant for the Dunfey people.

Q Did you know that the mayor was coming to the board meeting before the board meeting began?

A Yes.

Q How did you know that?

A Mr. Farrell told me.

Q Did Mr. Farrell tell anybody else that you knew of?

A I don't know who he told.

Q When did he tell you?

A When did he tell me?

Q Yes.

A He told me the day of the hearing. He asked me did I know, and I said no, I didn't know.

Q Did he tell you right before the hearing?

A No, I believe he called me at home before I left but my recollection is he called me at home.



Q Do you recall ever being in your office behind the boardroom prior to a board meeting with other board members when Mr. Cofield arrived and was asked to remain in another office for a couple of minutes?

* During the time of this evaluation are you talking about?

Q Yes.

A Well that happened recently but that didn't involve me in any way.

Q Who did it involve?

A Mr. Farrell and Mr. Cofield. Mr. Farrell asked Mr. Cofield to step out of the room for a minute. He was - Mr. Farrell was talking to Mr. Flaherty, Mr. Joseph Walsh and myself and in effect was-

Q About what?

A That he wanted more time to consider the submissions.

Q When you say he wanted more time, how much more time did he want? Why didn't he feel as though he had more time?

A You'll have to ask him.

Q When was this meeting?

A It was the day that he asked Mr. Cofield to step out of the room.

Q What day is that?

A It was prior to a meeting, I - it was-

Q Was that the meeting where Mr. Robert Walsh was fired?

A No sir, it was after that. That was a meeting, I can't give you the exact date but I would say it was sometime in September probably.

Q Do you think it was in August, August 24th?

A Well it may have been, I'm not sure. I was just-

Q The BRA did not vote on the tentative designation on that day, is that right?

A No, that's right.

Q Then why did Mr. Farrell feel as though he needed more time to talk about that?

A You'll have to ask Mr. Farrell, I don't know why Mr. Farrell wanted more time.

Q Well did he sit there and say 'I need more time to discuss' -

A He didn't want to act on it that day.



- Q He didn't give any reason?
- A I don't recall that he did.
- Q Was it on the agenda for that day?
- A No.
- Q Well then why did he indicate to you that he wanted more time? Was there an indication that there was going to be a vote that day?
- A There had been some speculation that there might be a vote that day, yes.
- Q A speculation on whose part?
- A Newspapers.
- Q Was there any grounds for that speculation that you know of?
- A It was not on the agenda and I'm not sure.
- Q Well did it come as a surprise to you that Mr. Farrell just out of the blue stated 'I want some more time to think about this issue?'
- A Yes.
- Q You expected to vote on the hotel that day?
- A I think I did, yes. We had been discussing this for a long time and my own personal feeling was that I'd like to get it out of the way.
- Q Did you suggest to Mr. Farrell that he put it on the agenda?
- A I don't think so, no.
- Q Why not, if you were ready to get it out of the way?
- A I could always make a motion, I didn't have to ask him to put it on the agenda.
- Q Would you have made a motion to vote on the intended designation?
- A On that particular day, I might have.
- Q But would you say that Mr. Farrell's statement that he wanted more time deterred you from doing so?
- A Yes.
- Q And why was Mr. Cofield asked not to come in to be a part of that discussion?
- A Ask Mr. Farrell, I didn't ask Mr. Cofield to leave, Mr. Farrell did.
- Q You have no idea why Mr. Farrell didn't want Mr. Cofield there?

- * I think he's answered that three or four times.
- A I don't know why. I assumed he felt that Mr. Cofield was not sympathetic but I, you're asking me what was in Mr. Farrell's mind and I'm not sure why he asked Mr. Cofield to leave. He did ask him to leave and I heard him ask him to leave.
- Q Okay, what did John Sloan talk about at the meeting at which he and the mayor spoke?
- A Well I think John Sloan said that he felt the Zuckerman proposal was too strong for the area in which it would be located and then I asked him what he meant by too strong and my recollection is he said in effect 'too outstanding' and I said, 'does that mean too good?' and he said, 'well yes.'
- Q Do you recall raising the question about his relationship with Bob Kenney at that time?
- A Do I recall my raising it?
- Q Yes.
- A I asked him if he had been pressured and my recollection is Mr. Cofield objected to the question.
- Q Why did he object?
- A You'll have to ask him. I don't know why he does some of the things, a lot of the things he does.
-
- Q Up until this point what memoranda or evaluations or meetings had you attended or received, whatever, evaluating the proposals?
- A Up to what meeting?
- Q Up to the meeting at which time the mayor gave his discussion of the Cossutta design?
- A I don't think we'd had received anything.
-
- Q Did you evaluate the proposals any further before you voted?
- A I had already reached my decision I think.
- Q By when?
- A Well, when I looked at them. I would say probably within two weeks after the mayor spoke to us. I gave it a great deal of thought.
- Q Okay, could you tell us what led up to your decision?
- A Yes, I went to see the models, I thought that Zuckerman's was certainly one of the best. I thought that substantial weight should be given to the recommendation by the mayor. He's the elected mayor of Boston and

I felt that when he comes before the board and makes a recommendation that we should attach weight to it.

Q Would you say that that formed the bulk of the criteria that you used?

A The bulk of the criteria I used was that when I looked at the models, I thought that Zuckerman was either the best or the second best, certainly one of the best.

Q Did you give no weight to John Sloan's evaluation because of his involvement with Bob Kenney?

A I didn't give too much. I don't have too high a regard for John Sloan. If you look at this month's issue of Boston Magazine, you'll see a picture of John Sloan and his roommate in a Beacon Hill apartment decorated with a billboard from the old Howard, that's not my idea of a design expert. I wouldn't want it in my kitchen and neither would my wife.

Q Mr. Colbert are you saying that the basis on which you made a decision was your view of the models in the model shop and the presentation made by the mayor?

A Plus I was not impressed by the recommendation of Mr. Sloan for the company for which Mr. Kenney was serving as consultant.

Q I understand that. Did you—

A If I felt, which I didn't, if I felt that the Dunfey Proposal was the best, I would have had some problems in voting for it.

Q I understand that. Did you read the reports that were or memoranda that were passed out to the members of the board?

A I did.

Q Did you concern yourself with anything other than design of the different submissions?

A I read over their financial—

Q The question really can be answered yes or no.

A Yes.

Q Alright, what were the things you were concerned about?

A I was concerned about the financial ability of the developers to do this and of course they have to meet certain criteria. Zuckerman's Wharf Properties has been tentatively designated. Before he's permanently designated he's got to do certain things.

Q Like what?

A Like show that he's financially able to do this, that he can get the funding.



Q That wasn't a concern of yours prior to making the designation?

A Yes, it was a concern, of course.

Q Well what was your conclusion as to financing?

A Well as I recall Mr. Zuckerman's firm, I think he had a letter of credit from First National Bank for, my recollection is around two and a half million. I thought that his - I believe that he could, from reading the material that was given us that he could get the financing.

Q Well let me be more specific. Was your concern about financing merely whether Mr. Zuckerman could build the building or was it a concern as to his financing in relation to the other seven proposals?

A That's kind of a complicated question. My concern was whether each applicant would be financially able to build a hotel. We've got a hotel down on Rowe's Wharf that we're waiting for six or seven years under Mr. Kenney - for John [inaudible] to do something. I did not want to get in that kind of a dilemma again.

Q You made a decision in your own mind that Mr. Zuckerman could build the hotel and that was as much as you were concerned about in terms of financial feasibility.

A Well if you'll stop and say I made a determination in my mind that Mr. Zuckerman was financially capable of building this hotel, the answer is yes. If you go on to say that was the only thing I was concerned about, no I don't-

Q Well I'm not saying that.

A What's that?

Q I'm not saying that.

A Well that's what you said I thought.

Q Let me repeat my question. In terms of financial feasibility, was your only concern that Mr. Zuckerman could build the hotel?

* I don't think you've fully gotten across to the witness what you mean by financial feasibility. Do you mean financial feasibility of the hotel as built that it will function financially?

Q Of the proposal of the developer-

A I was satisfied that he was financially capable of building the hotel.

Q Alright.

Q Did you take into consideration the economic benefit that the city would gain from having Zuckerman over another developer?

A Yes.



Q And how did that influence your decision?

A My recollection is that the city would benefit more from the Zuckerman proposal than it would from some of the smaller ones.

Q What led you to that decision?

A Well I studied them, but you people are acting as if I did this this morning. I did this some months ago and I don't remember every detail.

Q I understand that, did you read-

A And the implication by you and Mr. Lambert that I'm being dishonest because I don't remember every detail, I resent.

Q I'm not suggesting that you should remember every detail. Did you read the proposals, the notebooks that were submitted?

A Yes I did, yes.

Q And from the material that was in the notebooks, to the best of your recollection, is the material in the notebooks what led you to believe that Zuckerman would offer more to the city in terms of economic benefits?

A What do you mean the material in the notebooks?

Q I mean that-

A Every document and report on this that was given to me, I read.

Q I understand that. That's not what I'm talking about. I'm talking about the package of materials that was submitted by each developer as his submission, did you read the developer's submissions?

A Yes.

Q Did you read Zuckerman's submission?

A Yes.

Q Do you recall reading the financial aspects of the Zuckerman submission?

A In a general way.

Q Okay, let me bring your attention to some of the financial aspects of the Zuckerman proposal. One of which is that the \$16 million first mortgage commitment from John Hancock expired on February 28th. Do you know if that was ever renewed?

A No, but that sort of thing usually can be renewed.

Q Okay, do you know that in-

A A company like the John Hancock gives a financial commitment for a certain period and then at the end of the designated period it expires and you can assume they'll give it again, if it's needed.



- Q Was it your general impression that Zuckerman was offering more per room in taxes than other developers?
- A More per room?
- Q In taxes, property taxes to be paid to the city.
- A I'm not sure, no I don't remember precisely.
- Q Why did you think that Zuckerman would be more beneficial to the city economically?
- A My recollection is - his hotel is larger than some of the others.
- Q In rooms?
- A What?
- Q In room number?
- A No in the hotel size.
- Q So why necessarily would that be better than the others, size - why would -?
- A Well I think his hotel, I think the value of his hotel would be greater than the smaller hotels.
- Q When you say the value of his hotel, do you mean the amount that it costs to build it?
- A Yes.
- Q Is larger than the other hotels?
- A Than some of them, yes:
- Q Would that make it more beneficial to the city?
- A Well that's your question, you asked which would be more beneficial to the city, didn't you?
- Q Yes.
- A Well it would seem to me that his would be beneficial to the city.
- Q Excuse me. You said that his would be more beneficial to the city than most of the others or all of the others?
- A Yes.
- Q You said that his was a larger or more costly to build hotel than the others.
- A I believe, than some of the others I said.
- Q Okay. Is that why his is more beneficial to the city-because it's more costly to build?
- A Well I think that, my recollection is that it would cost more to build



than some of the others and it would be worth more when completed.

Q Worth more? How do you judge the value of a hotel?

A Well I suppose the number of rooms and that sort of thing.

Q Did his hotel have more rooms than all of the other submissions?

A Than some of them. I don't know about all of them.

Q Is that how you would judge the value of the hotel, by the number of rooms?

A I would think that would be one of the criteria.

Q Because it would bring in more income?

A Yes.

Q Is that how, that's how you judge the value of it? Would a hotel-

A Look there would be a number of ways I would judge the value of it. That's not the only way.

Q What are the other ways?

A I don't recall at the moment. I went over this thing and I studied it in a general way. I'm not in a position to give you every detail that went through my mind when I was studying it. I reached a conclusion that the Zuckerman proposal was the best proposal and overall was best for the city.

Q Okay, well let me clarify a few things for you.

A What you're doing is confusing them rather than clarifying them.

Q I'm not trying to confuse them.

A Well I suspect you are.

Q Zuckerman had less rooms than any of the other developers. Zuckerman was offering less money in taxes per room than any of the other developers. Zuckerman's building was less costly to-

A As I understand it, all of the developers planned to come in if they got it and ask for a 121A. Everyone of them I believe.

Q So then did the financial criteria have nothing - did that not effect your-

A I did not say that. You said it.

Q How did your knowledge of the fact that they were going to come in for 121A's affect your decision?

A It didn't. They were all going to do it obviously, it doesn't affect any decision.

Q Did it effect the way that you analyzed the financial-



A The fact that they were all going to come in for a 121A application did not affect me in any way, on anything.

Q Are you aware of a clause in the commitment from the John Hancock Company for Zuckerman that says that the taxes per room for Zuckerman's project are to be limited to under \$1,000 per room per year? Do you recall reading that?

A I probably did but I don't recall right now, no.

Q So then, did that have no impact on your decision or any impact on your decision?

A I don't recall.

Q Do you have any present memory of the comparative estimates of tax to be paid to the city between the eight different proposals?

A Not right now I don't Mr. Lambert, no. I did at one time.

Q Do you recall if any of - to the best of your knowledge were the submissions that were presented on January 12th, which was the deadline, the same as the ones that you reviewed?

A As far as I know, yes.

Q Are you aware of any changes that any of the developers made in between the time that—

A I was told that one developer took his model out and made some changes in it which I think was improper.

Q Do you have any idea which developer that was?

A It wasn't one of the top ones.

Q If it had been one of the top ones, would you have objected?

A I would think that that might, I don't think that's a proper thing to do. I think I would have just, I would disqualify the - could disqualify the person at the time.

Q Mr. Colbert have you ever seen this? Mr. Colbert is now looking at a document that I will mark in a second as an exhibit.

A I believe I have, yes.

Q Do you know what that is?

A Well I assume it's a report from Mr. Zuckerman's company.

Q What kind of report?

* Won't this document speak for itself?

Q I would like Mr. Colbert to identify it so that I make sure that we're talking about - his understanding is the same as mine about what the document is. I don't want to be talking about two different things.



Q We're asking him whether he recognizes it.

A I believe this is a presentation by Mr. - a general presentation by Mr. Zuckerman's company.

Q Is that the only presentation that you saw by Mr. Zuckerman's company or do you recall seeing another one?

A In a general way I think I saw another one but I don't recall. I read so much material on this that I don't recall every report and every item in every report.

Q Okay, let me refresh your memory about that document. That document is something that was submitted by Zuckerman's company five months after the deadline that the submissions were due. It's an update of materials based on more information that Zuckerman acquired in that time period between the deadline and May whatever it was that he submitted it. It came about a week after the presentation that he gave to the BRA staff people.

A When you say BRA staff people, you don't mean me.

Q No, I don't. Are you, I'm sure that offhand you're not aware of the contents of this, although you might have been at one point. I'm not asking you to recall what the contents are.

A I don't recall the contents.

Q Okay, there is quite a big difference about the contents of that proposal than there is about the contents of the proposal in January. Now there are some things that Mr. Zuckerman has added in the five months that he was able to work on his project that he didn't have when he first began or first handed in his submission. Are you aware of the fact that there's additional material in there as a result of his having more time to work on his project?

A No, I'd assume that was granted him by the staff. I don't know his presentation to the staff, I was not part of that at all.

Q Well if this includes additional information or changes from the original submission-?

A That - it was a presentation to the staff, is that right?

Q That's correct. Would you approve of supplementing a submission after the deadline?

A Would I approve of supplementing a submission-

* Do you agree that supplements or does it clarify it or what. I don't know whether he knows what it does.

A I don't know if it does or it doesn't.



Q Well for the record, let me just read the opening letter that's included in this pamphlet or notebook directed to Mr. Robert Walsh. 'Dear Bob, we appreciate having had the opportunity to make a presentation 'o you regarding the first class deluxe hotek, which our development team has proposed for the Long Wharf site. Certain questions arose during that meeting, which due to the shortage of time may not have been adequately answered. They are addressed in detail on the material accompanying this letter' and so on and so forth.

* It sounds like a clarification to me.

Q I'm not asking-

A Are you asking me if I see anything improper in clarifying it at the meeting?

Q Well, let me say that-

A Mr. Walsh apparently let him do it.

Q Is that improper in your opinion?

A No.

Q Why is it improper to take a model out of the model shop and bring it home and make adjustments to it but not improper for a developer to submit additional material?

A Well, if I went down to review the models and from looking at the models, I made a judgment and somebody took one of the models and brought them back and the models were different, and that model was different, it seems to me that's at least questionable.

Q How about if you didn't-

A The planning staff apparently let them do it so - Mr. Sloan and the design review people must have thought it was proper.

Q Well you're a policy maker for the Boston Redevelopment Authority. Do you think it's proper?

A On a model?

Q Yes.

A It doesn't seem to me it was but I haven't gone into it to the extent where I feel qualified to make a judgment at this point.

Q Does it seem to you that it would be proper to change the written part of the submission?

A If you had a meeting and questions come up and they're answering questions which arose at that meeting it would seem to me it's a proper thing to answer the questions.

Q Is that the question that you asked?



Q Yes. Let me say also that this is not a mere clarification of what transpired at the meeting. On January 12th, the Zuckerman Wharf Properties Trust did not have a construction company with it as part of the team. By May, and in this package, they did have a construction company with them. On January 12th, the cost of the project was \$21 million. By May it was \$24 million, almost \$25 million. There were differences—

A It's probably \$30 million by now, so.

Q There were differences in the amount of equity that he had by, between January and May. There were differences in the amount of square footage of retail space from January to May, so I would say that there were some differences and I personally would call them major differences. I'm not asking you what you would call them. But - do you approve of the fact that what you review in May is different from what you review at the date of the deadline?

A I don't know exactly why he made the changes. Our design review people are having developers and applicants make changes all the time. I suppose, they might well have had the change made in the model, I don't know.

Q Do you approve of that?

A Do I approve of what?

Q Of making changes—

A Of approving something, I don't see any objection to it.

Q If the mayor had so desired, do you believe the mayor has the right to fire the director of the BRA?

A Yes, I believe, Mr. Lambert, that when Logue was appointed early in the Collins Administration that at the time, this is my recollection, and I was on the board at that time, that at the time he was appointed that Mr. Collins had a by-law or a rule or something adopted by the BRA providing that the administrator and it's now the director, they changed the name, that the administrator could be fired by either the board or the mayor and the mayor recommended Mr. Walsh - I would assume that he's got the same right to recommend that the redevelopment authority or a redevelopment authority director be hired or fired that he has to fire the police commissioner.

* I think what he's trying to say is—

A What I'm saying is yes I do.

* He thinks that he had the right to recommend him under the statute and to recommend his discharge under the statute.

A I think actually, I think if anybody studied the rules at the time that Logue was appointed they would find that the mayor had the right to fire him, without even bothering with the BRA board if he wanted to do that.

Q That's the answer to my question.



A And I think that's come down from the Collins Administration.

Q Is that by statute at this point?

A No it would be a rule of the BRA.

* I think what happens as a legal matter is the mayor makes a recommendation for the appointment and then - as Mr. Colbert has tried to say, he can follow through by making a recommendation or discharge but actually it's the board that hires and the board that fires upon a recommendation.

A I think there was a provision in either our by-laws or something that would give the mayor the right to fire the administrator if he wanted. That's my recollection. That happened twenty years ago.

Q But it's now in the by-laws of the authority?

A I'm not sure, I think I said.

Q Do you have any further statement that you'd like to make before the hearing ends?

* I don't think there's anything necessary, do you?

A Well I'd like to say that I voted for - I made the motion for, that the project - that the Boston properties be designated as tentative developer of the Long Wharf Hotel Site because in my judgment it was the best design - that Mr. Zuckerman is capable of building the hotel. I went down to the North End personally and I talked to people down there and asked them how they felt about it. The people I had talked to-contrary to Councilor Sansone and Langone had no objection to whatever-to building a hotel on the waterfront. They didn't feel that the hotel on the waterfront would have any impact on the North End. A number of them felt that jobs would be created there both while the hotel was under construction and after it was completed. And it was my judgment too - I voted for Mr. Zuckerman's proposal solely on my own judgment. I was not pressured. It was not because I was a holdover, I would have done the same thing if I had a ten-year appointment or was beginning another appointment.

Q I have one question now that you bring that up.

A Yes sir.

Q You've indicated that you had a concern for the feelings of the people in the North End.

A Because of the statements by Councilors Langone and Sansone.

Q Were you aware of an association down there that had taken a look at all eight proposals and made recommendations?

* Is this the North End Association?

Q No, it's the Waterfront-

* Oh, the Waterfront Association.



Q Right.

* I think there - there's two groups. In fact I think the hotel is in the waterfront section and not in the North End as a legal matter.

A That's the point that-

Q Are you aware of the Waterfront Association?

A Vaguely.

Q Were you aware that they had ranked the proposals?

A Yes, I think I was aware of that.

Q Do you know what the ranking was?

A I don't recall.

Q Was that a concern of yours?

A Not really. I don't think they were any more competent to rate them than I was. I don't think Mr. Sloan is any more competent to judge them than I was.

Q How about the people in the North End, were they more competent to rate, rank them?

A I don't think so, no.

Q Well why were you concerned with the people in the North End?

A Because Mr. - Councilors Sansone and Langone indicated there was general opposition, this was in the newspapers. General opposition to the construction of a hotel-

* Any hotel, wasn't it?

A Any hotel on the Waterfront because of the impact it would have on the North End traffic-wise and so on. They were opposed to any hotel and I went down to talk to people and found, the information I gathered that was not so.

Q Are you aware of any court ordered requirements on the height or the massing of the building?

A There are court restrictions which of course - anybody that builds a hotel they would have to comply with before they finally designate as developer.

Q Do most of the developers already comply?

A Most of them I'm not sure if most of them did. Some of them did and some of them didn't is my recollection.

Q Where does Zuckerman fall, does he or does he not comply?

A I think he has to make some refinements in his plans.

Q Do you have any idea what those refinements are?



A Not specifically right now, no.

Q In general?

A I think, obviously he has to bring his plan into compliance with the federal court order.

Q Do you have any idea what - how that would affect the design of his building?

A Not specifically right now, no.

Q Wouldn't it be a concern of yours considering the fact that design is such a major criteria, what the changes would be?

A Yes, he must bring his design into compliance with the court order.

Q I understand that, but my question is you have stated that one of your, one of the greatest criteria you considered was the design of the building?

A Yes.

Q Wouldn't it be of just as great concern to you what changes in the design will have to be made in order to bring that building into compliance with the court order?

A I don't believe that bringing the building into compliance with the court order will affect the nature of the design which impressed me.

* As I understand what Mr. Colbert is saying he doesn't think that any major change in the design of Zuckerman will be necessary to comply with the court order or the stipulation filed in court.

Q That's what I understand him to be saying too.

*Arthur Coffee - Counsel to the witness.

Excerpt from the Testimony of James Flaherty

M

Q Could you - are there ways in which you think that the Zuckerman proposal does not conform to the terms of the stipulation and agreement or do you think it does conform?

A I think it conforms. I happen to like the proposal, I like the looks of the building myself -

Q That's a different issue.

A I understand but I'm just - it conforms or it could conform.

Q Are there ways - are there any aspects about it that make it so that it doesn't conform?

A Not to my knowledge.

Q Alright. So then let me just repeat the question. To the best of your knowledge, the Zuckerman proposal conforms to the requirements of the stipulation and agreement?

A I understand that all the proposals do not conform to the requirements -

Q Do not?

A Do not. There is room for modifications on all of the proposals and that's something we've always -

Q And the Zuckerman proposal does -

A -along with Zuckerman and they call Marriott and Perini and -

Q So you're saying that the Zuckerman proposal does not conform.

A I didn't say it doesn't conform. I think the Zuckerman proposal needs some adjustments as do all of them.

Q Minor? If something needs adjustments -

A Yes, minor adjustments.

Q - to the - then it doesn't - then it can't conform right now.

A I - that's right, yes, that's right.

Q So it doesn't conform.

A Right, as far as my knowledge it doesn't conform, they all need adjustments.

Q They all need adjustments. None of them conform and the Zuckerman proposal being one of them does not conform also.

A Right, right.

Q In what way does it not conform?

A I believe through - the walkway has to be opened up a little more and there are some other architectural stuff that I don't remember that -

Q Some other what?

A Some other design stuff that had to be changed or - to meet the specifications for the requirements of the community.

Q Did anybody ever discuss with you the ways in which it does not conform?

A No.

Q Do you have any idea of the specific things besides the walkway - do you have any idea of other ways that it doesn't conform?

A No I don't.

Q To the best of your knowledge does it conform except for the walkway?

A I believe it does yes.

Q So that once the walkway was opened up -

A Yes.

Q - and there was a, you know, widened, then it would conform?

A I believe so yes.

Q Did you ever ask about whether or not it was not in conformance besides that?

A No.

Q Alright, getting back to the question that Jeff was mentioning, what were the criteria that you used to vote for the Zuckerman proposal?

A The inspection of the site, the -

Q When you say the inspection of -

A The inspection at the model shop, the design itself that I saw [inaudible].

Q In terms of its aesthetic value?

A Yes.

Q Yes.

A Feasibility, financial feasibility -

Q Of what?

A Of putting the project together.

Q Did you think that -

A The financial feasibility of putting the project together.

Q Those three?

A And the fact that the mayor's recommendation had a influence on me as did Mr. Blake's recommendation have an influence on me.

Q Alright. Let's just take one at a time. In terms of the design aspect of it -

A Yes.

Q I'm no professional in design and though I have an opinion about things I tend to rely on other people's opinion about that. Would you say that you tend to rely on other people's opinion when you're making a choice - based on design?

A Yes.

Q Did you, in fact, rely on other people's opinion?

A To a certain degree I did, yes.

Q Whose?

A I relied on staff's recommendations to a certain degree. I relied on Mr. Blake's recommendations, I relied on the mayor's recommendations.

Q Okay, well let's start with the staff's recommendations. Staff, the person who is most knowledgeable about design on the staff is John Sloan.

A That's right.

Q Ok. Alright. Let me ask you this. Did you rely on John Sloan's recommendations?

A Most of the times, most of the times we rely on staff recommendations.

Q In this particular instance as far as design is concerned for this site, did you rely on John Sloan's recommendations for design as one of the things that you relied on?

A As one of the things-probably, yes.

Q Were there other staff persons in the BRA who you relied on for design recommendations besides John Sloan?

A No, he's the chief of the design department.

Q Ok, do you recall what his recommendations were?

A I believe he recommended the Dunfey thing didn't he?

Q Yes, he did. What did he say about the Zuckerman-Cossutta plan?

A He thought it was - wouldn't fit in the area, he thought it was too bold. It architecturally didn't fit in that particular spot.

Q Ok. What did Blake say about the Cossutta plan?

A Blake thought it was - it could live in there - it could conform in within a year and I believe the same thing. I feel that - I happen to like the building - I really do.

Q Ok. Did you, are you familiar with a group called the Design Advisory Committee?

A It's my understanding - I'm not familiar with them, I understand there is a design advisory committee that consults the design department on various designs throughout the city.

Q Were they called for this particular project?

A I don't know that. I presume if the design advisory committee, I presume they have some sort of input into all projects in the city.

Q Were you interested in - did you think that they met or do you not know if they met?

A I don't know that.

Q So you don't know if they evaluated the projects or not?

A No, not really, no.

Q Okay. So as far as design is concerned you relied on the mayor's choice, you relied on John Sloan's evaluation, you relied on Blake's evaluation and you relied on your own aesthetic sensibility.

A That's right, that's correct.

Q As far as financial feasibility, were you talking about the strength of a developer to complete the project?

A Yes.

Q Were you talking about anything else?

A No, just as long as he can complete the project, finance it and construct it and operate it. And a good operator, Holiday Inn was a decent operator. He had a strong commitment from John Hancock Insurance Company.

Q What makes you say that?

A Pardon?

Q What makes you say that?

A What do you mean what makes me say that?

Q The strong commitment from John Hancock.

A Oh, he has a commitment from John Hancock.

Q Did you ever see any papers respecting that commitment?

A Did I ever see any papers, no I think I had a conversation either with Bob Walsh or - an evaluation or something that he had - or was that - I think it was a conversation I had with Mr. Walsh as to the financial ability as to the developers and we all had, they all had them - a financial -

Q Well, let's just talk about his. What conversation did you have?

A About his ability to build the proposal.

Q You said you had a conversation with Bob Walsh about his-

A I believe it was Mr. Walsh, yes.

Q And Mr. Walsh told you that what?

A That he had a financial commitment from the John Hancock Insurance Company.

Q Did anybody ever bring to your attention the fact that the commitment from John Hancock had expired?

A No, but most commitments in my experience - a lot of commitments are given and they expire and they are rewritten. That's nothing unusual.

Q So you didn't check to see whether or not, or ask anybody about it?

A No, I didn't, no. That doesn't bother me because it happens every day of the week - they are given for a certain period of time and after the time lapses they are rewritten.

Q Did you ever read any evaluations of the financial strength of the developers by any BRA staff persons?

A No I didn't.

Q So what makes you say that Zuckerman was financially strong enough to bare the burden of that site?

A Because of his past performances, his ability to develop, the fact that he had a commitment from John Hancock and his Holiday Inn commitment.

Q Do you know anything about the cost of construction for that site?

A I think it's somewhere in the vicinity of twenty - twenty five million dollars.

Q You mentioned Mr. Zuckerman's past performance. Could you tell me what you mean by that?

A He's been noted to be a real estate developer throughout the city and throughout the country.

Q What has he built in the city?

A He hasn't built much in the city.

Q He has?

A He hasn't.

Q He hasn't. Has he built anything in the city?

A He's a real estate developer in the city, yes.

Q Do you know which developments?

A No, I don't, just what's heresay, that's all.

Q How many do you think he's built in the city?

A I don't know if he's built any in the city, to tell you the truth.

Q Where has he built?

A Outside the city.

Q Where?

A I don't know. This is again heresay. I was just inquiring to Mr. Zuckerman's ability to develop and build and I understand that he's developed some stuff outside the city and outside the state.

Q How many hotels has he built?

A I don't know.

Q Has he built any?

A I don't know.

Q So, as far as experience goes, you're not really sure how much experience he has?

A Yes, that's probably correct, yes.

Q Okay, and as far as his commitment from John Hancock, that had expired but that's natural?

A Yes, those happen every day of the week, really.

Q In what other way was he, - now that you're now sure about his experience although you think that he had some.

A Yes.

Q What makes him financially strong?

A He's got -

Q Were his cost estimates good did you think?

A I didn't see his cost estimates.

Q Well what did you base your decision on?

A Again I based my decision on my own personal observation of the models, the recommendation of the chief executive of the City of Boston, the Sloan recommendation and the Blake recommendation.

Q No, we're talking now about the financial feasibility only.

A That, no other than that then I knew he had a commitment from the John Hancock, no other -

Q In your opinion would the Zuckerman proposal be more beneficial or less beneficial than other developments in terms of tax revenue to be brought into the city?

A I don't know. I understand they're all looking for 121A's so.

Q So the estimates that they projected, how did you interpret them?

A They didn't enter into making my decision.

Q They?

A They did not enter into me making my decision.

Q Do you feel that that's an important criteria?

A It is an important criteria but they're all going 121A's and basically that they would be - again that recommendation was up to the staff, and we have to make that judgment and we do make that judgment of going on 121A's the city would negotiate with the proposed developer, the best possible tax agreement that they can get from that particular developer.

Q Are you familiar with the new formula for 121A - for the expected revenues to be seen by 121A developments that was worked out by a staff person?

A No I haven't seen that, no.

Q So you have no idea what kinds of expectations the BRA and the city has?

A Other than the fact that there is a 121A committee in which they meet and go over those proposals and the developer and whoever is involved will negotiate and see certain figure amongst those persons involved and I'm sure the city negotiates the best possible deal they can get.

Q We're familiar with a new, some new formula where the BRA is expecting something between twelve and fifteen hundred dollars per room for hotels.

A I'm not familiar with that.

Q Are you aware of the fact that there's something written into the Zuckerman financial commitment from John Hancock that at no time will more than one thousand dollars per room be paid in taxes?

A I'm not familiar with that, no.

Q If you had been familiar with that, would that have encouraged you to raise questions about voting for Zuckerman?

A It could have.

Q Were you familiar with any of the tax proposals made by the eight different developers?

A No, I was not.

Q Can you recall any other time in the time that you've been at the BRA when the BRA has voted to tentatively designate somebody without first hearing a recommendation by the director?

A I said that earlier, no.

Q No, the question I asked you earlier had to do with whether or not the matter was on the agenda. Now I'm asking you about a recommendation by the director. Is it fair to say that normally a director will recommend?

A Yes it is.

Q Why was no recommendation sought in this particular designation?

A Why? I don't know.

Q Were you uncomfortable making a designation without a staff recommendation?



A Was I uncomfortable with it? Well, not really. We just wanted to get it over with and end it and you know [inaudible] pursue other things that are important to the City of Boston.

Q But I would assume that you'd be interested in making a quality designation - I mean that's what the BRA is there for.

A Yes that's true, yes.

Q Would you have felt more comfortable with a staff recommendation prior to the board designation?

A With a staff recommendation?

Q Staff or director.

A Well at the time we did it, I don't believe we had a director.

Q At the time the designation was made?

A Oh, we had a director, yes, Ryan was there, yes, that's right. We had a director.

Q Would you have felt more comfortable?

A Yes, probably yes.

Q Why didn't you seek one?

A Why didn't I seek one? I don't know. We went through it all, I've seen it all. In my mind, I was comfortable with the Cossutta proposal.

Q Are you aware of community evaluation made of the eight different proposals?

A I had heard some talk that there was an evaluation by the community, yes.

Q Was that of concern to you? In terms of your designating one of the developers?

A I took that into consideration, yes.

Q Do you know how the eight different proposals ranked?

A No, I don't.

Q Well then how could you take that into consideration?

A Of the community's concern.

Q Well if the community had expressed a concern by ranking -

A I hadn't seen that - I knew it was community input and I was concerned with the input of the community.

Q You're concerned with their input but you had no idea of what they were looking for?

A I didn't see the recommendations, no. I was concerned with the input as well as I was concerned with the North End community and the Waterfront Park, the elderly housing, the Mercantile Wharf building.

Q Well you weren't concerned that they had their input, that they had their say?

A Yes, sure.

Q But you didn't care what they said?

A I never got any communications from anybody in the neighborhood indicating they were pleased or displeased with the process.

Q Did you ask the director or the chairman for any information?

A No, I didn't.

Q Is it fair to say that you were concerned that you wanted them to have community input but you were not so concerned that you cared what they said about it?

A I had no communication from the community one way or the other.

Q And you never asked any questions to find out what they thought?

A I knew the North End community if they were displeased they certainly would make it known to you as they have in the past.

Q I'm talking about the Waterfront community as well as the North End community.

A Well when I say the North End I mean - I just presume it's the Waterfront and the North End. No I never had any communication with either the North End or the Waterfront community.

Q Are you familiar with any meetings that took place between the Waterfront Residents Association and the architect for the Zuckerman proposal, Cossutta?

A I understand that there was a meeting where I read in the papers, that there was a meeting held amongst those persons.

Q Where was the meeting held?

A I presume it was held in the community.

Q Well, I'm familiar with one meeting that was held at the community. Are you aware of any meetings that took place in City Hall or at the BRA?

A No, I was not.

Q To this day, do you know if there was any meetings at - ?

A No.

Q Would you approve of a meeting that was held in the boardroom between the community and an architect for any one of the developers?

A Sure.

Q Prior to designation?

A Sure, why not?

Q Well I'm not saying you shouldn't or you should. I'm just asking you.

A Sure.

Q There's nothing wrong in your mind with the community meeting with one of the architects for a project prior to designation?

A No.

Q Would it be okay also for an architect to meet with the community and only one architect meet with that community in the BRA boardroom, for example?

A If the community and the architect agreed to that, sure why not.

Q Would you ever authorize such a meeting?

A Would I?

Q Yes.

A If they come and ask me, I would think there would be no reason for me to authorize a meeting. If the community architect want to get together and discuss a proposal -

Q Would you ever authorize a staff person of the BRA to arrange such a meeting?

A Would I?

Q Yes.

A If I was requested, I would probably make an inquiry and ask the staff person to do it, sure.

Q Well let's say if the chairman of the BRA was absent and you were the acting chairman, hypothetical - you would authorize that meeting?

A Sure.

Q Or you would authorize a staff person to arrange that meeting?

A I would sure, if they asked me, sure I would.

Q Are you aware whether any of these proposals were changed subsequent to their initial submission?

A No.

Q No, you have no information either way?

A No.

Q How would you feel about it - I don't want to use that term "feel" but it's our information that some proposals were changed between the time that they were first submitted on January 12 and the time that they were finally reviewed by the staff - how do you feel about that process that allows for change of the proposals?

- A It's a pretty open process really and if somebody forgot something or didn't send something in, I see nothing wrong with accepting something late.
- Q What if somebody forgot twenty thousand square feet of space that would bring in tax income to the city on January 12 but remembered it by May? Would that bother you or is that?
- A Yes, that would bother me I guess but again the process is so open up there that our staff is generally - we allow that, it's just one of those things that it's a mistake - comes in late.
- Q Is that a good thing, are you glad?
- A I don't know if it's a good thing or a bad thing, I don't know.
- Q How about if developers submit proposals on January 12 and then the models go to the model shop which are open for the public to view, and one of the developers goes into the model shop and sees what everybody else has to offer, goes back, takes his model home and makes some changes on it probably with the advantage of having looked at, and seeing what everybody has come up with for this site, comes back with a different model?
- A I don't know if that happens, I don't know.
- Q Whether or not it happened or not would you approve of that?
- A Not really.
- Q Would that be cause perhaps for you to suggest that that developer who did that be eliminated from the competition.
- * I'm going to advise the witness not to answer such a question, it's a hypothetical and a hypothetical -
- A Well alright -
- * Well let me just explain. You're talking about the possibility that a model was removed from the model shop and it was modified I think to for him to properly answer that question more facts would have to be given as to exactly what was taken, what was the change could he make any determination that in fact it was taken advantage of somebody else's creativity and the posture of your questions to me seems much too broad and speculative and I advise the witness not to answer.
- Q Okay. [One] developer testified before the Finance Commission that he took his model out of the model shop and it was perfectly public and he didn't do it privately and there was no problem about it, took it home and made what he said were substantial revisions to it. Are you, do you approve of that action?
- A No I wouldn't approve of that action, no.
- Q Is that reason to disqualify him from the process?
- A That should have been brought to our attention by the staff I thought, I would think.

- * May the records show that this member of the staff is hearing this for the first time, and I've been involved in the project for four years.
- A Let me just bring to your attention that there are lots of people on the staff who knew about it.
- * That's fine.
- Q Okay. Now what about developers who didn't change their models but changed their submissions?
- * Again, I would caution the witness not to answer the question that generally. A change may be a typo or it may be a complete change of an entire proposal.
- Q I'm not talking about typos - I'm talking about for example, one developer who, on January 12 submitted a package that showed 33,000 square feet of retail space. By the time that that developer came in to make a presentation before the BRA staff and its director, that developer had 55,000 square feet of retail space. Not only that, that developer had a construction contractor with him on the job by the time his presentation was made which he did not have when his submission was entered on January 12. That developer also had two and a half million dollars more equity from another source or three million dollars more equity I think is right by the time his presentation was made. Do you approve of that?
- * I think that's specific enough, if you feel comfortable I would just caution you, I think that you should feel comfortable that you understand the full import of whether you consider that a substantial change or not and if you don't feel comfortable that you know -
- A Yes, I'm not comfortable with the fact that it's a substantial change, I don't know. I didn't see them I haven't heard of them, this is the first I've heard of them and -
- Q Well, it seems to me I'm being specific about the kinds of changes that I'm talking about.
- A Again this is the first time I'm hearing of it so I had no knowledge of it.
- Q I don't say that you did have knowledge of it but if you had to vote next week on this matter, and now that you have knowledge of it, would you recommend that that developer be disqualified?
- A Not necessarily, no.
- Q Would it influence your decision in any way?
- A It could one way or the other.
- Q Do you approve of people submitting material of that nature five months after the deadline of the submissions?
- A I'm sure, you know it's probably done every day of the week up there.
- Q Whether it's done or not is not my question.
- A Well it probably is done every day of the week.
- Q That's still not my question.

A I understand that.

Q Do you approve of it?

A It all depends.

Q On what?

A On a million different things, you know. We don't hold to the letter of the -

Q If you were writing policy would you write policy that would allow that?

A Probably not, I don't know. It all depends.

Q What does it depend on?

A Again, we don't hold specifically to the letter of the kits or the, there's room for flexibility - you're telling me that they made substantial changes - I don't know that. It certainly wasn't brought to my attention. The staff didn't bring it to my attention, I don't know. I'd have to make that decision.

Q When you evaluated the proposals in your own mind to make your decision, did you consider the reputation and image of the hotel operators that went along with each proposal?

A The operators?

Q Yes.

A I would think that most of them were highly qualified operators.

Q But do you know what type - okay, what type image in an operator was the BRA seeking for this hotel? By image I mean luxury vs. say first class. There's a spread in there.

A Most of them I thought were about moderate type of operators, Dunfey, Hilton in my opinion Holiday Inn they are all about moderate hotel operators.

Q You would put them all in the same class?

A Yes, well you know Hilton is probably a little more expensive, Dunfey's is probably in the middle, you know Holiday Inn is in there. Canadian Pacific I don't know what type of operations they have. Marriott's - you know today they are all getting fifty dollars a room.

Q Aside from the price of the room, did you consider the image of the operator? Do you think they have different images?

A Oh there's no question they have different images sure they do - Holiday Inn is internationally known. It's a good chain. It's just more of a moderate type of hotel where I think if you choose Dunfey, Hilton, Holiday, you'd probably financially select as affordable for a person in that area to go and live there or sleep there for anything with their family they would probably afford more of the Holiday chain than they could the Dunfey or the Parker House.



Q Were you aware of any objective in terms of the type of hotel that was to be built down on the Waterfront?

A Other than a first class hotel, no, which I presume they would build down there anyway.

Q What do you mean by first class?

A First class decently run hotel.

Q You're not using that word - we got into this problem last time. You're not using that word in terms of rating a hotel on the luxury first class, second class type of rating.

A None of them are luxury to my knowledge. They're all moderate good reputable well-established firms.

Q And that's what you call first class?

A Yes, my style of life, yes.



Q Prior to this meeting, the one where he read this statement that they weren't going to vote, did the board have one of these private little meetings beforehand?

A Yes, I got to that meeting late too. I generally just get there around 2:30 and we sit there for a few minutes and then go in.

Q What was going on at that meeting for the time period that you were in there? Well, first of all who was in there?

A I really don't remember. I would think that all of the others were. Generally at the meeting there were five board members, myself included and the director. Kane is at some of those meetings, Kane Simonian. It is understood that no one else is to come in there during those meetings. Again, Kane sometimes is and sometimes isn't. I left, made the phone call, came back in and then we went in. During this time, generally I have a good rapport with the other board members. We differ on things, but I certainly do not go out of my way to be nasty with them or on a personal basis ever conflict with them, so generally we, I maintain a good rapport with them and clearly differ on a lot of things and I make it clear where I don't agree and I'll do it in that meeting and say the same thing and go into why and raise my objections in the public meeting. Although I sit in on those meetings, I never do, I've never intended to and never will change my position on anything. I will know ahead of time what they feel about an item and if they bring a particular item up, I generally won't point out anything that I have a problem with if they bring up and discuss an item and ask me what my view is, I will indicate what my view is and I will, I don't by any means change what I say in my position on it. As I remember it, that meeting I wasn't in there too long and then we went in because I took a phone call and then went into the meeting. Now at another meeting, one other thing happened, I don't think it was at this meeting where we -

Q Where Farrell said that you wouldn't vote.

A Where Farrell made this statement, but it was at one other meeting, I think it might have been after that meeting. Let me just physically set up what the office is like. This is the board room, with a door here in the back of the room here, this is the hallway and here are sort of the offices on the other side of the hall that are sort of the private offices for the board members.

Q Do you know the room number?

A No.

Q But if I were in the audience and I was facing the board it would be behind that?

A That's right. We usually sit down and meet in this one on the right but if anyone wants to make a private phone call or something, he will go into the other one which is always vacant, too. And this one has nothing but two desks and chairs, I mean no one uses that and this other one is set up as an office with stuff in there but there's no one physically in there at least on the days that we meet. At one meeting and I think it was after the meeting in which Bob Farrell said that we would not designate a developer at this meeting, I again came in sort of late the others were in there, all of the others, well, no no no no, somebody wasn't in there. Maybe it was Joe Walsh who wasn't in there. All of them might have been in there. If there's anybody who wasn't in there it was Joe Walsh. I came in, they had been in there and talking and almost immediately after I went in the room Bob Farrell said to me "James can I ask you to go in the other room we're talking



ething and then I'll tell you." And I said "huh" and then he said
k you to go and that's the first time that had ever happened. "Can
ou to go in the other room, we're talking and I'll tell you, I'll tell
So I said okay and I just walked out and I walked in the boardroom
at down and a couple of minutes later Bob went, when his door is open you
sort of see this room he went in this room and I wasn't in there and then he -
went in that room looking for you, basically?

Looking for me.

Okay.

Then he came here to the door and my seat is the first seat here and said, "James
come on in" and I said "No, that's alright," something like that, and then he
said "No come on and I want to tell you what" then my comment to him was - I
guess I said that first because I remember repeating it. I said to him, "If
you have something to tell me that's different than what you have to tell the other
members, then tell me in public." He was really surprised. He said "What, now
come on I want to tell you." And I repeated it. I said, "If you have something
to tell me that's different than what you're telling the other members, then tell
me in public, because I was in the meeting, I mean, there were a few people in
there, in the audience...He was visibly-he was surprised and visibly shaken and he
said, "Huh" and I repeated it and said "Well, okay, okay, you want to hear it,"
or something like that and then he went back in the other room and got the other
members and then they came all in.

Q Do you remember the date of this meeting?

A I really don't.

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